Supreme Court, U. S.
FILED
JAN 4 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1072

FORD MOTOR CREDIT COMPANY,

Petitioner,

v.

CATHERINE EDMONDSON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

LEVINE & D'ALESSIO, P.A.
MORTON P. LEVINE
BURGESS W. STONE
2415 The Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 521-1624
Attorneys for Petitioner

Of Counsel:

SCHIFF HARDIN & WAITE
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000

January 3, 1979

La Salle Street Press — Chicago Printed in U.S.A.

TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	2
Statement of Facts	4
Reasons for Granting the Writ	6
I. The Decision Below Ignores Authoritative Sources of Interpretation of the Truth in Lending Act	7
A. The Decision Below Ignores the Federal Reserve Board's Regulations and Interpretations	7
B. The Decision Below Ignores State Commercial Law	10
C. The Decision Below Ignores Custom and Usage	12
II. The Vague New Test Announced by the Decision Below Reflects and Reinforces the Confusion in the Lower Federal Courts	13
A. Other Federal Decisions Conflict with the Decision Below	13
B. Other Federal Decisions Use a Different Standard to Interpret the Relevant Provisions of Truth in Lending Act	14
C. The Fifth Circuit's Vague New Test Should Be Avoided Because it Puts the Truth in Lending Act in Constitutional Jeopardy	15
D. This Court Must Resolve the Confusion Created by the Decision Below	16

PAGE

III. The Fifth Circuit's Decison Does Not Advance the Purposes of the Truth in Lending Act But Has a Substantial Adverse Impact on Consumer Credit Transactions 17

Conclusion 21

Appendix

Opinion of the Court of Appeals for the Fifth Circuit (July 28, 1978) A-1

Order of the Court of Appeals (July 28, 1978) A-13

Order of the Court of Appeals on Petition for Rehearing and Rehearing En Banc (October 6, 1978) A-14

Order of the United States District Court for the Northern District of Georgia, Atlanta Division (August 27, 1976) A-15

Recommendation of Special Master (April 29, 1976) A-17

Automobile Retail Instalment Contract between Catherine T. Edmondson and Allen-Russell Ford, Inc. . A-24

TABLE OF AUTHORITIES

Cases

Basham v. Finance America Corporation, 583 F.2d 918 (7th Cir. 1978) 14

Bone v. Hibernia Bank, 493 F.2d 135 (9th Cir. 1974) .. 8, 9

Brown v. Jenkins, 135 Ga. App. 694, 218 S.E. 2d 690 (1975) 11

Burrell v. City Dodge, Inc, Cons. Cred. Guide (CCH) ¶98,764 (N.D. Ga. 1974) 16

Connally v. General Construction Co., 269 U.S. 385 (1926) 16

Douglas v. Beneficial Finance Co., 469 F.2d 453 (9th Cir. 1972) 9, 17

Drew v. Flagship First National Bank of Titusville, 448 F.Supp. 434 (M.D. Fla. 1977) 14

PAGE

Eby v. Reb Realty, Inc., 495 F.2d 646 (9th Cir. 1974) .. 9

Gennuso v. Commercial Bank and Trust Co., 566 F.2d 437 (3d Cir. 1977) 14

Graham v. Richardson, 403 U.S. 365 (1971) 15

Grant v. Imperial Motors, Inc., 539 F.2d 506 (5th Cir. 1976) 16

Irvin v. Public Finance Company of Alabama, 340 So. 2d 811 (Ala. App. 1976) 15

James v. Ford Motor Credit Co., No. 78-F-647 (D.Colo. August 21, 1978) 14

Johnson v. McCrackin-Sturman Ford, Inc., 527 F.2d 257 (3rd Cir. 1975) 9, 12

Jones v. Allied Loans, Inc., 447 F.Supp. 1121 (D.S.C. 1977) 14

Jordan v. De George, 341 U.S. 223 (1951) 16

Moore v. Great Western Savings & Loan Ass'n, 513 F.2d 688 (9th Cir. 1975) 9

Mourning v. Family Publications Service, 411 U.S. 356 (1973) 9

Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974) 15

Rollins Communications, Inc. v. Georgia Institute of Real Estate, Inc., 140 Ga. App. 448, 231 S.E.2d 397 (1976) 11

Rounds v. Community National Bank, 454 F.Supp. 883 (S.D. Ill. 1978) 13, 14, 16

Shanks v. Greenbriar Dodge, Inc., 577 F.2d 296 (5th Cir. 1978) 17

A.B. Small Co. v. American Sugar Refining Co., 267 U.S. 233 (1925) 16

Starks v. Orleans Motors, Inc., 372 F.Supp. 928 (E.D. La. 1974), *aff'd mem.*, 500 F.2d 1182 (5th Cir. 1974) . 14

Taylor v. R.H. Macy & Co., Inc., 481 F.2d 178 (9th Cir. 1973), *cert. denied*, 414 U.S. 1068 (1973) 9

PAGE

United States v. Standard Brewery, 251 U.S. 210 (1920) 15

Willis v. Town Finance Corporation of Atlanta, 416 F.Supp. 10 (N.D. Ga. 1976) 15

Wilson v. Allied Loans, Inc., 448 F.Supp. 1020 (D. S.C. 1978) 15

Statutes and Rules

Colo. Rev. Stat. §§ 5-1-101, *et seq.* 11

Consumer Credit Protection Act, 15 U.S.C.A. §§ 1601, *et seq.*

Section 128(a)(10), 15 U.S.C.A. § 1638(a)(10) 2

Ga. Code § 109A-9-104(f) (1975) 11

Idaho Code §§ 28-31-101, *et seq.* 11

Ind. Code Ann. §§ 24-4.5-1-101, *et seq.* (Burns) 11

Iowa Code Ann. §§ 537.1101, *et seq.* (West) 11

Judicial Code, 28 U.S.C. § 1254(1) 2

Kan. Stat. §§ 16a-1-101, *et seq.* 11

Me. Rev. Stat. tit 9A, §§ 1-101, *et seq.* 11

Motor Vehicle Retail Instalment Sales Act, N.Y. Pers. Prop. Law (McKinney) §§ 301, *et seq.*

Section 2, N.Y. Pers. Prop. Law (McKinney) § 302 10

Section 14, N.Y. Pers. Prop. Law (McKinney) § 314 10

Okla. Stat. Ann. tit. 14A, §§ 1-101, *et seq.* (West) 11

S.C. Code §§ 37-1-101, *et seq.* 11

Truth in Lending Regulations, Regulation Z, 12 C.F.R. § 226.1, *et seq.* (1978)

Regulation Z, 12 C.F.R. § 226.2(gg) (1978) 3, 7

Regulation Z, 12 C.F.R. § 226.8(b)(5) (1978) 2, 3

Uniform Commercial Code, § 2-702 17

Uniform Consumer Credit Code, § 1.101, *et seq.* (1968)

Section 2.407 10

PAGE

Section 4.103 11

Section 4.108 10

Uniform Consumer Credit Code, § 1.101, *et seq.* (1974)

Section 3.301 11

Section 4.103 11

Section 4.108 11

Utah Code Ann. §§ 70B-1-101, *et seq.* 11

Wis. Stat. Ann. §§ 421.101, *et seq.* (West) 11

Wyo. Stat. Ann. §§ 40-14-101, *et seq.* 11

Other

1 Anderson, *Uniform Commercial Code*, § 1-201:110(3) (2d ed. 1970) 11

1 Cons. Cred. Guide (CCH) ¶¶ 4270, 4400-4430 12

Federal Reserve Board Staff Opinion No. 1053 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,393 (May 28, 1976) 15

Federal Reserve Board Staff Opinion No. 1066 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,406 (June 4, 1976) 8, 17

Federal Reserve Board Staff Opinion No. 1084 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,424 (June 15, 1976) 17

Federal Reserve Board Staff Opinion No. 1263 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,736 (November 23, 1977) 10

9 Fed. Res. Bull., A42 (Table 1.55) (Sept. 1978) 18

Finance Facts Yearbook 1977, at 45-47 (Table 18) ... 18

1 Gilmore, *Security Interests in Personal Property* § 11.1, at 336 (1965) 12

Washington Credit Letter (November 13, 1978) 20

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. .....

FORD MOTOR CREDIT COMPANY,

Petitioner,

v.

CATHERINE EDMONDSON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Petitioner, FORD MOTOR CREDIT COMPANY (hereinafter "Ford Credit"), prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit entered in this matter on July 28, 1978.

OPINIONS BELOW

The opinion of the Court of Appeals (A-1-A-12) is reported at 577 F.2d 291. The opinion of the District Court (A-15-A-16), and the Recommendation of the Special Master which the District Court adopted (A-17-A-23), are not reported.

JURISDICTION

The Judgment of the United States Court of Appeals for the Fifth Circuit was entered on July 28, 1978. The order

denying Ford Credit's timely Petition for Rehearing en Banc was entered on October 6, 1978 (A-14). This petition was filed within 90 days of that date.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Do the Consumer Credit Protection Act, 15 U.S.C.A. § 1638(a)(10), and Regulation Z, 12 C.F.R. § 226.8(b)(5) (1978), require that an assignment of returned or unearned insurance premiums be considered a "security interest" requiring separate disclosure on the face of an automobile retail instalment contract, contrary to Federal Reserve Board interpretations, state law and settled commercial usage?

2. What standard should the federal courts apply in determining whether a particular commercial arrangement amounts to a "security interest" under the Consumer Credit Protection Act and Regulation Z?

STATUTES INVOLVED

The statute and regulations involved in this case are:

Consumer Credit Protection Act, § 128(a)(10) (15 U.S.C.A. § 1638(a)(10)):

> **Sales not under open end credit plans.**
>
> (a) In connection with each consumer credit sale not under an open end credit plan, the creditor shall disclose each of the following items which is applicable:
>
> • • •
>
> (10) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

Regulation Z, 12 C.F.R. § 226.2(gg) (1978):

> "Security interest" and "security" mean any interest in property which secures payment or performance of an obligation. The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

Regulation Z, 12 C.F.R. § 226.8(b)(5) (1978):

> (b) *Disclosures in sale and nonsale credit.* In any transaction subject to this section, the following items, as applicable, shall be disclosed:
>
> • • •
>
> (5) A description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify. In any such case where a clear identification of such property cannot properly be made on the disclosure statement due to the length of such identification, the note, other instrument evidencing the obligation, or separate disclosure statement shall contain reference to a separate pledge agreement, or a financing statement, mortgage, deed of trust, or similar document evidencing the security interest, a copy of which shall be furnished to the customer by the creditor as promptly as practicable. If after-acquired property will be subject to the security interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired.

STATEMENT OF FACTS

On April 24, 1975, Catherine T. Edmondson entered into an Automobile Retail Instalment Contract with Allen-Russell Ford, Inc. for the purchase of a 1970 MG Midget (A-24-A-25). The contract was subsequently assigned to Ford Credit.

As required by the Consumer Credit Protection Act, 15 U.S.C.A. §§ 1601, *et seq.* (hereinafter the "Truth in Lending Act" or the "Act"), the face of the contract (which is the "disclosure statement" under the Act) contained certain disclosures. In paragraph 13, the contract disclosed the security interest acquired by Ford Credit as follows:

> Security Interest: Seller shall have a security interest under the Uniform Commercial Code in the Property (described above) and in the proceeds thereof to secure the payment in cash of the Total of Payments and all other amounts due or to become due hereunder.

In paragraph 18, which is contained on the reverse side of the contract and so is not a part of the "disclosure statement," the contract required the buyer to purchase and maintain in force physical damage insurance on the collateral. That paragraph also provided:

> *Buyer hereby assigns to Seller any monies payable under such insurance, by whomever obtained, including returned or unearned premiums,* and Seller hereby is authorized on behalf of both Buyer and Seller to receive or collect same, to endorse checks or drafts in payment thereof, to cancel such insurance or to release or settle any claim with respect thereto. The proceeds from such insurance, by whomever obtained, shall be applied toward replacement of the Property or payment of the indebtedness hereunder in the sole discretion of Seller. (Emphasis added.)

The italicized portion of this provision means that if the insurance policy on the vehicle is cancelled, any unearned

premiums will go to Ford Credit.[1] Under the standard policy, both the insurance company and the buyer have a right to cancel the coverage; Ford Credit has no contractual or other right to force cancellation. Moreover, the buyer's failure to make payments on the loan does not cancel the insurance coverage. Thus, the chief characteristics of the right to unearned premiums are: (1) they become payable only when a policy is cancelled; (2) Ford Credit has no control over the decision to cancel; and (3) cancellation is not causally related to the buyer's default because the policy stays in effect even after the buyer has defaulted on his principal obligation.

The normal expectation, of course, is that the policy will run its course and all premiums will be earned. The right to unearned premiums has little economic value because the amount involved (the cost of minimum property coverage) is generally small to begin with, because it decreases over the term of the policy, and because it will come to Ford Credit only if the insurance is cancelled prior to the scheduled termination of the coverage. If the right to unearned premiums is an interest in property at all, it might best be described as an "incidental" interest, unrelated to the primary purpose of the consumer credit transaction.

Plaintiff filed suit on May 19, 1975 in the United States District Court for the Northern District of Georgia, contending, nevertheless, that this assignment of insurance premiums constituted a "security interest" which should

[1] The insurance company also has a right to decline to issue the policy at the outset, in which case the premium would be returned. The terms "cancel" and "cancellation" are used herein to refer to this right as well. Similarly, the term "unearned" premiums is used herein to include "returned" premiums.

have been disclosed under the Truth in Lending Act, and asserting other claims no longer at issue. Ford Credit argued that the assignment was not a security interest within the meaning of the Act since it was never intended to secure the obligation incurred. The Special Master to whom the case was assigned recommended to the District Court that liability be imposed on Ford Credit on account of this claim, and the District Court adopted that recommendation. On appeal the Fifth Circuit affirmed, reasoning that the right afforded Ford Credit by paragraph 18 was a "valuable economic right" (A-5-A-9) and was the sort of interest which the Truth in Lending Act requires be disclosed as a security interest.

REASONS FOR GRANTING THE WRIT

The Fifth Circuit's decision in this case creates a new and hopelessly amorphous test for determining what is a security interest requiring disclosure under the Truth in Lending Act. It does so by ignoring authoritative sources of interpretation, one of which this Court has held must be given substantial weight. The decision reflects present uncertainty, and generates more uncertainty, in an important area of the national economy where certainty and predictability are essential to maintain the free flow of credit. If allowed to stand, it places in jeopardy millions of consumer credit transactions entered into in good faith and, perhaps more importantly, makes compliance with the Truth in Lending Act in multitudinous future transactions into little more than a guessing game—but a guessing game with very high stakes. This Court must step in to bring some order out of what can only be described as chaos in the lower federal courts.

I.

THE DECISION BELOW IGNORES AUTHORITATIVE SOURCES OF INTERPRETATION OF THE TRUTH IN LENDING ACT.

A. The Decision Below Ignores the Federal Reserve Board's Regulations and Interpretations.

The Truth in Lending Act does not define the term "security interest". The Federal Reserve Board ("Board"), specifically empowered by Congress to interpret the requirements of the Truth in Lending Act, has defined "security interest" in Regulation Z, 12 C.F.R. § 226.2(gg) (1978), as "any interest in property which secures payment or performance of an obligation." The Regulation also gives some specific examples of what the Board had in mind:

> . . . security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

These examples make it clear that the Regulation focuses on security interests the purpose and function of which is to secure the debt—and *not* on interests in property which are incidental to the consumer transaction at issue. Proper respect for the Board's Regulation Z, read with any understanding of the principle of *ejusdem generis*, would halt the Act's disclosure requirement well short of the sort of incidental interest in property at issue here. The Fifth Circuit ignored the clear import of the Regulation.

The Board has also explained the purpose behind disclosure of Truth in Lending Act security interests:

> The security interest disclosure in Regulation Z is intended to serve the very important function of informing a customer that his property might be reached to satisfy payment of the obligation which he has incurred, *in the event that the disclosed credit terms are not met by the customer.* This knowledge may encourage the customer to more realistically assess the credit terms and his own ability to meet them, knowing that his subsequent failure to comply with those terms may result in the loss of property. (Emphasis supplied.) Federal Reserve Board Staff Opinion No. 1066 [1974-77 Special Releases Transfer Binder] CONS. CRED. GUIDE (CCH) ¶ 31,406 (June 4, 1976).

The right to receive unearned insurance premiums is wholly unrelated to the consumer's ability "to satisfy payment of the obligation which he has incurred," because the very existence of the unearned premiums depends upon the cancellation of coverage, a decision unrelated to default and one over which the lender has no control. Disclosure of this assignment as a security interest would simply not serve the purpose for which the Board has said such disclosures are required by the Act—to let the borrower know what property will be reachable *on default.* The Fifth Circuit's decision also ignores this clear interpretation of the Act by the Board.

Congress gave the Board broad authority to interpret the requirements of the Truth in Lending Act. Judicial deference to the Board's interpretations is an essential element in the fair and efficient administration of the Act. Through the exercise of its broad responsibilities under the Act, the Board has gained valuable experience and developed a unique level of technical expertise and understanding of the policy considerations underlying the Act. The significance of these qualities was recognized in *Bone* v. *Hibernia Bank,* 493 F.2d 135 (9th Cir. 1974):

> We believe that it is precisely these kinds of policy decisions about the disclosure statement, requiring the weighing and balancing of the various available choices, that Congress entrusted to the Federal Reserve Board by granting it such broad powers. The conclusions thus reached by the Board are based upon its specialized experience and access to information, which is not likely to come to the attention of a particular judge in a given case. 493 F.2d, at 140.

Respect for the Board's views is also necessary in order to insure uniformity in the disclosures made by creditors, which is vital to the fulfillment of the purposes of the Truth in Lending Act. A set of disclosure requirements which are interpreted and applied uniformly will provide a single form of disclosure that consumers can become familiar with and understand.

The informed judgment of the Board has been accorded substantial weight by the courts. *Moore* v. *Great Western Savings & Loan Ass'n,* 513 F.2d 688, 690 (9th Cir. 1975); *Johnson* v. *McCrackin-Sturman Ford, Inc.,* 527 F.2d 257, 267-68 (3rd Cir. 1975); *Eby* v. *Reb Realty, Inc.,* 495 F.2d 646, 650 (9th Cir. 1974); *Bone* v. *Hibernia Bank,* 493 F.2d 135, 140 (9th Cir. 1974); *Taylor* v. *R. H. Macy & Co., Inc.,* 481 F.2d 178, 180 (9th Cir. 1973), *cert. denied,* 414 U.S. 1068 (1973); *Douglas* v. *Beneficial Finance Co.,* 469 F.2d 453, 456 n.2 (9th Cir. 1972). This Court has itself recognized the important role of the Board in interpreting the requirements of the Truth in Lending Act. *Mourning* v. *Family Publications Service,* 411 U.S. 356, 365 (1973).

Yet in equating a Truth in Lending Act "security interest" with a "valuable economic right," the Fifth Circuit swept past the express language of Regulation Z, which requires a determination whether this interest "secures payment or performance of an obligation." The decision below also pays little attention to the Board's conclusion that the Act should be interpreted to focus on, and require disclosure of, only the lender's rights upon default. Proper

deference to the Board's careful interpretation of the Act would have led to the conclusion that this incidental interest in unearned insurance premiums is not the sort of interest that requires disclosure under the Truth in Lending Act.

B. The Decision Below Ignores State Commercial Law.

In addition, the Fifth Circuit's decision ignored another important source of authority: the manner in which state commercial law treats the assignment of unearned insurance premiums. The Board itself has indicated that questions whether particular rights constitute Truth in Lending Act security interests "would be better addressed as a matter of State law." Federal Reserve Board Staff Opinion No. 1263 [1974-77 Special Releases Transfer Binder] CONS. CRED. GUIDE (CCH) ¶ 31,736 (November 23, 1977).

State legislation regulating the credit industry does not regard a creditor's right to unearned insurance premiums as a security interest. For example, the New York Motor Vehicle Retail Instalment Sales Act, N.Y. Pers. Prop. Law (McKinney), Art. 9, in Section 314 prohibits "the creation of a security interest in any personal or real property, other than the motor vehicle which is the subject matter of the retail instalment sale. . . ." and yet provides in Section 302 that any "unearned insurance premium refund received by the holder of the contract . . . shall be credited to the final maturing instalments of the retail instalment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and the holder of the contract or either of them."

The Uniform Consumer Credit Code, now adopted in various forms by 11 states, also bars in one section the taking of a security interest in anything but the property purchased and in another section contemplates that the creditor may nonetheless take an assignment of unearned insurance premiums. *Compare* UCCC, § 2.407 with § 4.108

(1968), and UCCC, § 3.301 with § 4.108 (1974).[2] Clearly the authors of that statute, like those who wrote New York's, did not view the assignment of unearned premiums as a security interest.

Commentators on state commercial law also do not consider incidental interests in property such as unearned insurance premiums to be something which should be regulated as a security interest. Where the assignment is absolute and does not relate to default, for example, there is no security interest under the Uniform Commercial Code:

> An absolute assignment of money due under a contract in payment of a debt owed by the assignor is not the creation of a security interest under the Code. . . . 1 Anderson, *Uniform Commercial Code,* § 1-201:110(3) (2d ed. 1970).[3]

[2] The following states have enacted a version of the UCCC: COLORADO, COLO. REV. STAT. §§ 5-1-101, *et seq.;* IDAHO, IDAHO CODE §§ 28-31-101, *et seq.;* INDIANA, IND. CODE ANN. §§ 24-4.5-1-101, *et seq.* (Burns); IOWA, IOWA CODE ANN. §§ 537.1101, *et seq.* (West); KANSAS, KAN. STAT. §§ 16a-1-101, *et seq.;* MAINE, ME. REV. STAT. tit. 9A, §§ 1-101, *et seq.;* OKLAHOMA, OKLA. STAT. ANN. tit. 14A, §§ 1-101, *et seq.* (West); SOUTH CAROLINA, S.C. CODE §§ 37-1-101, *et seq.;* UTAH, UTAH CODE ANN. §§ 70B-1-101, *et seq.;* WISCONSIN, WIS. STAT. ANN. §§ 421.101, *et seq.* (West); WYOMING, WYO. STAT. §§ 40-14-101, *et seq.* The UCCC regulates only "consumer credit insurance," a term which does not include property insurance. See UCCC, § 4.103(1) (1968) and § 4.103(1) (1974).

[3] Georgia law would not consider this assignment a UCC security interest for additional reasons. Georgia adopted the Uniform Commercial Code in 1962; under GA. CODE § 109A-9-104(f) (1975), which was effective when this case arose, "a transfer of an interest or claim in or under any policy of insurance" is excluded from Article 9 coverage. And even under the Georgia UCC, the question of whether a transfer of a right creates a "security interest" is a question of intent of the parties. *See, e.g., Rollins Communications, Inc.* v. *Georgia Institute of Real Estate, Inc.,* 140 Ga. App. 448, 231 S.E.2d 397 (1976); *Brown* v. *Jenkins,* 135 Ga. App. 694, 218 S.E.2d 690 (1975).

In addition, Professor Gilmore explains that the law has never tried to regulate as statutory security interests the bewildering variety of incidental arrangements which borrowers and lenders reach. Moreover, Gilmore's analysis makes it clear that default is an essential element in the definition of a security interest. *See,* 1 Gilmore, *Security Interests in Personal Property* § 11.1, at 336 (1965).

In reaching its *Edmondson* decision, the Fifth Circuit thus ignored an important and authoritative source of interpretation: the settled commercial law of the states.

C. The Decision Below Ignores Custom and Usage.

Finally, the custom and usage of borrowers and lenders themselves provide a reliable guide as to what is and what is not a "security interest." Terms having a common and well understood meaning in the industry being regulated should be interpreted consistent with that established meaning. *Johnson* v. *McCrackin-Sturman Ford, Inc.,* 527 F.2d 257, 265-66 (3rd Cir. 1975). Lenders and borrowers have never treated the term "security interest" as including the right to receive unearned insurance premiums, which are usually purchased with the proceeds of their financing. The standard legal reporting service in this area, for example, covers the entire area of "security interests" without treating an assignment of unearned insurance premiums; that matter is covered, where it belongs, in the section on insurance to which it is incident. See 1 CONS. CRED. GUIDE (CCH) ¶¶ 4270, 4400-4430.

Thus the Fifth Circuit ignored virtually every source of authority determining what is or is not a security interest for Truth in Lending Act purposes—the regulations and interpretations of the Board, the commercial law of the states, and the expectations of borrowers and lenders as reflected in industry usage.

II.

THE VAGUE NEW TEST ANNOUNCED BY THE DECISION BELOW REFLECTS AND REINFORCES THE CONFUSION IN THE LOWER FEDERAL COURTS.

A. Other Federal Decisions Conflict with the Decision Below.

In *Rounds* v. *Community National Bank,* 454 F.Supp. 883 (S.D. Ill. 1978), the District Court reached a conclusion directly contrary to the Fifth Circuit's on the precise question presented by this case.

In *Rounds,* the court reasoned that Federal Courts did not have the "judicial power, under the guise of construction, to impose disclosure requirements which transcend those mandated by the statute." *Ibid.,* at 887. The court then concluded:

> [N]ot every interest or benefit running to a creditor is a security interest within the intendment in the Act and the Regulation. (Citation omitted). Both the assignment of unearned premiums and the assignment of insurance proceeds do provide some benefit and protection to the lender. But neither of those provisions subject the debtor's property to any lien or any risk. Rather, the insurance provisions of the agreement are properly construed as being mutually protective of the interests of both the debtor and the creditor.
>
> • • •
>
> It must be concluded that the contract provisions in question did not create security interests within the intendment of the Act and Regulation. The provisions impose no claim against, nor risk to, the plaintiff's assets. If such ephemeral interests are to be deemed to be security interests within the disclosure requirements of the Act, that determination should emanate from Congressional enactment or from a determination of the Board, not from a judicial decree. 454 F.Supp. at 888.

Rounds thus put the assignment of unearned insurance premiums in the category where it belongs—an incidental interest in property—and outside the scope of Truth in Lending security interests.[4]

In *James* v. *Ford Motor Credit Company,* No. 78-F-647 (D. Colo. August 21, 1978), the District Court reached the same conclusion with respect to an assignment of the right to the proceeds of insurance payable upon loss, construing language identical to that in the present contract.

B. Other Federal Decisions Use a Different Standard To Interpret the Relevant Provisions of Truth in Lending Act.

The results in *Rounds* and *James* reflect the fact that other courts (including the Seventh Circuit and, apparently on occasion, the Fifth Circuit) look to something more than the potential economic right conferred to determine the nature and scope of a security interest under the Truth in Lending Act; they look to the commercial law of the states. In *Basham* v. *Finance America Corporation,* 583 F.2d 918, 924 (7th Cir. 1978), the court stated, "The legal extent of a security interest is determined according to state law. . . ." In *Drew* v. *Flagship First National Bank of Titusville,* 448 F.Supp. 434, 437-38 (M.D. Fla. 1977), the court noted, "... the Uniform Commercial Code now provides a universal definition of the term 'security interest' ". In *Jones* v. *Allied Loans, Inc.,* 447 F.Supp. 1121, 1125 (D.S.C. 1977), the court observed, "State law determines the nature and extent of the security interest required to be disclosed under the Act and regulations." *See also, Starks* v. *Orleans Motors, Inc.,* 372 F.Supp. 928, 931 (E.D. La. 1974), *aff'd mem.,* 500 F.2d 1182 (5th Cir. 1974).

[4] The Third Circuit has indicated that an interest in unearned insurance premiums is a Truth in Lending Act security interest. *Gennuso* v. *Commercial Bank and Trust Co.,* 566 F.2d 437 (3d Cir. 1977). However, the issue was not litigated by the parties, who focused on the adequacy of disclosure.

Moreover, the courts have automatically and consistently examined state commercial law to determine a related question—whether or not the description of the security interest (once a security interest has been determined to exist) is sufficient. This is best illustrated by the cases involving security interest in after-acquired property. *See, e.g., Wilson* v. *Allied Loans, Inc.,* 448 F.Supp. 1020 (D.S.C. 1978); *Willis* v. *Town Finance Corporation of Atlanta,* 416 F.Supp. 10 (N.D. Ga. 1976); *see also Irvin* v. *Public Finance Company of Alabama,* 340 So.2d 811 (Ala. App. 1976); Federal Reserve Board Staff Opinion No. 1053 [1974-77 Special Releases Transfer Binder] CONS. CRED. GUIDE (CCH) ¶ 31,393 (May 28, 1976).

C. The Fifth Circuit's Vague New Test Should Be Avoided Because It Puts the Truth in Lending Act in Constitutional Jeopardy.

The Fifth Circuit's new standard looks to the value of the economic right conferred. Except that the manner in which the test was applied in this case suggests its potential breadth, the test gives little or no guidance. Perhaps *all* "valuable economic rights" are suddenly Truth in Lending Act security interests so long as a court can conceive of circumstances, however remote, under which the "value" would be applied to the borrower's account. Perhaps there is some further but unstated sorting process to be applied. The Fifth Circuit's new test gives no clue. The very vagueness of the Fifth Circuit's test is a reason to avoid it, lest the statute and regulation so read create a serious constitutional issue.

The courts should avoid construing a statute in a way that casts doubt upon its constitutionality. *Regional Rail Reorganization Act Cases,* 419 U.S. 102, 135 (1974); *Graham* v. *Richardson,* 403 U.S. 365, 382 (1971); *United States* v. *Standard Brewery,* 251 U.S. 210, 220 (1920). The Truth

in Lending Act, as interpreted in *Edmondson*, contains a definition of "security interest" so vague that "men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926). Yet, substantial penalties attach to reading the definition in what later proves, in the judgment of an appellate court, to have been the wrong fashion. If allowed to stand, the Fifth Circuit's novel reading of the Truth in Lending Act's requirements for disclosure of "security interests" puts the Act itself in constitutional jeopardy. *See generally, Jordan* v. *De George*, 341 U.S. 223, 231 (1951); *A.B. Small Co.* v. *American Sugar Refining Co.*, 267 U.S. 233, 239 (1925).

D. This Court Must Resolve the Confusion Created by the Decision Below.

The Fifth Circuit's decision, read with past case law, does not bring any certainty to this area of the law; it does just the reverse.

The confusion which will result is demonstrated by the fact that several arguably valuable economic rights conferred by contract have been held *not* to create "security interests" for Truth in Lending purposes. *See, e.g. Burrell* v. *City Dodge, Inc.*, 5 Cons. Cred. Guide (CCH) ¶ 98,764 (N.D. Ga. 1974) dealing with the creditor's right to pursue a deficiency judgment on default; *Rounds* v. *Community National Bank*, 454 F.Supp. 883 (S.D. Ill. 1978), which, in addition to deciding the issue in this case, deals with the creditor's right to insurance proceeds in the event of loss; Special Master's opinion in *Edmondson* (A-23), dealing with the creditor's right to hold personal property found in the vehicle after repossession; *see also, Grant* v. *Imperial Motors, Inc.*, 539 F.2d 506 (5th Cir. 1976), dealing with the creditor's right to repossess on default.

Similarly, a number of creditors' rights created by statute —valuable economic rights—have been held not to create

security interests under the Truth in Lending Act or have been interpreted by the Board in that fashion. *See, e.g., Douglas* v. *Beneficial Finance Co.*, 469 F.2d 453 (9th Cir. 1972), dealing with the creditor's right to confession of judgment; Federal Reserve Board Staff Opinion No. 1084 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,424 (July 15, 1976), dealing with the right of set-off; Federal Reserve Board Staff Opinion No. 1066 [1974-77 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶ 31,406 (June 4, 1976), dealing with the creditor's right to reclamation under UCC § 2-702.

These cases do not apply the standard used by the court below; indeed, they demonstrate in themselves something of the confusion that reigns in this area. The Fifth Circuit's opinion, with its new test, casts further doubt on all of them if it is allowed to stand.

The area of the law into which the Fifth Circuit so incautiously waded was ripe for this Court's attention even before the *Edmondson* decision; it now cries out for this Court's guidance.

III.

THE FIFTH CIRCUIT'S DECISION DOES NOT ADVANCE THE PURPOSES OF THE TRUTH IN LENDING ACT BUT HAS A SUBSTANTIAL ADVERSE IMPACT ON CONSUMER CREDIT TRANSACTIONS.

In *Shanks* v. *Greenbriar Dodge, Inc.* (reversed by the Fifth Circuit upon the authority of *Edmondson*, 577 F.2d 296) the Magistrate's Report to the trial court noted:

> From a review of the cases submitted to this Magistrate recently, it would appear that under these circumstances, most lenders in the District claim the same right in the unearned premiums which the defendant here did, and it would appear further that this fact is not disclosed as a security interest.

The Magistrate was correct. Indeed, most consumer credit contracts throughout the United States contain provisions with respect to assignment of unearned insurance premiums similar to those in Ford Credit's contract form and do not disclose these provisions as security interests. The decision of the Fifth Circuit in *Edmondson* places in jeopardy millions of consumer credit contracts now outstanding. Yet the decision does not advance by one iota the purposes of the Truth in Lending Act, since it requires disclosure which tells the consumer nothing about his rights on default. *See supra,* pp. 7-8.

Although the dollar amount involved in this case is small, it would be misleading to ignore the staggering volume of transactions that are subject to the Act and Regulation Z and to which the principles adopted in this case will apply. At year-end 1976, for example, total consumer instalment credit outstanding in the United States was 178.8 billion dollars.[5] This total represents approximately fifty million separate consumer credit transactions.[6] The transaction involved in this case is in all respects indistinguishable from a large portion of this total.

[5] Finance Facts Yearbook 1977, at 45 (Table 18). By June of 1978, total consumer instalment credit outstanding had increased to 237.2 billion dollars. 9 Fed. Res. Bull. A42 (Table 1.55) (Sept. 1978).

[6] Although no exact statistics are available as to the total number of transactions involved, an approximation may be made. In December, 1976 the average size of instalment contracts for new auto purchases were $5,369; for used autos the average was $2,697. Finance Facts Yearbook 1977, at 46. The average size of personal loans made was $1,369. Id., at 47. Averaging these averages would give a transaction average of $3,145. Dividing the 178.8 billion dollar total by that average would give a figure of over 56,000,000 transactions. While that figure is an estimate, it is clear that the total number of consumer finance transactions outstanding in the United States that are covered by the Truth in Lending Act exceeds fifty million.

While conceived as a simple statute to require uniform statements of credit costs so that consumers could "comparison shop" for credit, the Truth in Lending Act has developed into a highly technical statute often difficult to apply to diverse credit transactions. Its application to varying factual situations resulted in the issuance of Regulation Z by the Board, which was charged by Congress with the responsibility for the interpretation of the Act and, along with the Federal Trade Commission, with its enforcement. The Board and its staff have also issued hundreds of formal and informal interpretations and opinions relating to the Act and the Regulation and their application to various practical factual problems. Relying upon these guidelines and the requirements of the Act and the Regulation, sellers and lenders have developed printed forms that have been used in the millions of transactions subject to the Act each year.

When, as here, a lender complies in good faith with all of the requirements of the Act and Regulation Z as interpreted by the Board in light of state commercial law, it should not be subjected to liability upon the basis of a questionable theory that accomplishes little more than a windfall for litigants and their lawyers and a disruption of established lending practices. In a highly regulated area such as this, the parties should be allowed to rely upon the requirements of the Act and Regulation Z as interpreted by the Board. The Court has an opportunity in this case to confirm this basic principle in the context of issues that affect virtually every consumer credit transaction.

The particular disclosure at issue in this case can be revised, of course, although the revision of future forms will not prevent the application of this novel decision to the millions of identical forms already used. But the Fifth Circuit's opinion in *Edmondson* has opened the door for

the assertion that *any* creditor's right must be disclosed as a security interest—since virtually any such right can be characterized as a "valuable economic right." Lenders will, of course, disclose *every* economic right to avoid claims; borrowers will have to try to make some sense out of an even *more* crowded and confusing disclosure form, which will bury the information they really need—what property will be reached in the event of a default—in a maze of confusing description.

Moreover, if allowed to stand, *Edmondson* will spawn endless litigation disputing whether all sorts of creditors' rights, whether incidental or not, are "security interests". The statute, Regulation Z and the Board's interpretations made clear what needed to be disclosed in this case. In going beyond these requirements the Fifth Circuit has only obfuscated and complicated what was intended to be a clear and meaningful disclosure.

The number of truth in lending cases has already swollen to record levels,[7] fostered in part by judicial interpretations of the Truth in Lending Act which accepted strained or tortured construction of the Act's requirements. The decision in this case can only lead to further purposeless litigation, because it turns compliance into a guessing game and places in jeopardy billions of dollars of consumer financing —all without furthering the objective of truth in lending.

[7] From statistics released by the Administrative Office of the U.S. Courts, the *Washington Credit Letter,* November 13, 1978, reported: "During the 12 months ending June 30, 1978, 1957 (new truth in lending) suits were filed (in U.S. District Courts), a 372 percent increase over the year ending June 30, 1972 (the first year in which separate figures were compiled)." Of the 1957 new cases filed, 725 or 37% were in the Fifth Circuit. As it has in every year since 1972, the Fifth Circuit has led all Circuits by a large margin having more than twice as many new truth in lending cases filed as the circuit having the next highest number (The Second Circuit had 300 new cases filed).

CONCLUSION

For all of the reasons heretofore stated, we urge the Court to grant a writ of certiorari to review the judgment and opinion in this case so that the Court may adopt a standard of interpretation which introduces some certainty and stability into this important sector of the American credit economy.

Respectfully submitted,

LEVINE & D'ALESSIO, P.A.
MORTON P. LEVINE
BURGESS W. STONE
2415 The Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 521-1624
Attorneys for Petitioner

Of Counsel:

SCHIFF HARDIN & WAITE
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000

January 3, 1979

APPENDIX

OPINION OF THE COURT OF APPEALS
JULY 28, 1978

IN THE UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 76-3773

CATHERINE EDMONDSON,
Plaintiff-Appellee,

v.

ALLEN-RUSSELL FORD, INC.,
Defendant,

and

FORD MOTOR CREDIT COMPANY,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Georgia, Atlanta Division

No. C75-940A—Newell Edenfield, *Judge*

Decided July 28, 1978

Rehearing and Rehearing En Banc Denied October 6, 1978

Before WISDOM, GOLDBERG and RUBIN, Circuit Judges.

GOLDBERG, Circuit Judge:

[1] This case, like *Shanks* v. *Greenbriar Dodge, Inc.*, 577 F.2d 296, (5th Cir. 1978), also decided today, requires us to determine whether an assignment of returned or unearned premiums of physical damage insurance must be

disclosed as a security interest under the Truth-In-Lending Act ("the Act"), 15 U.S.C.A. §1638(a)(10) (1974),[1] and Regulation Z, 12 C.F.R. §226.8(b)(5).[2] We hold that such assignments do constitute security interests for purposes of Regulation Z and must be disclosed. We further hold that the disclosure here was inadequate to meet the requirements of Regulation Z and the Act.

[1] Section 1638(a) provides in pertinent part:

In connection with each consumer credit sale not under an open end credit plan, the creditor shall disclose each of the following items which is applicable:

. . . (10) A description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates.

[2] Section 226.8(b) provides in pertinent part:

Disclosures in sale and nonsale credit. In any transaction subject to this section, the following items, as applicable, shall be disclosed:

. . . (5) A description or identification of the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates or, if such property is not identifiable, an explanation of the manner in which the creditor retains or may acquire a security interest in such property which the creditor is unable to identify. In any such case where a clear identification of such property cannot properly be made on the disclosure statement due to the length of such identification, the note, other instrument evidencing the obligation, or separate disclosure statement shall contain reference to a separate pledge agreement, or a financing statement, mortgage, deed of trust, or similar document evidencing the security interest, a copy of which shall be furnished to the customer by the creditor as promptly as practicable. If after-acquired property will be subject to the security interest, or if other or future indebtedness is or may be secured by any such property, this fact shall be clearly set forth in conjunction with the description or identification of the type of security interest held, retained or acquired.

The facts in this case are straightforward. On April 24, 1975, plaintiff-appellee Catherine T. Edmondson entered into an "Automobile Retail Instalment Contract" with defendant Allen-Russell Ford, Inc. ("Allen-Russell") for the purchase of a used 1970 MG Midget automobile. The contract was subsequently assigned by Allen-Russell to defendant-appellant Ford Motor Credit Co. ("Ford"). The contract included on its face a disclosure statement as required by the Truth-In-Lending Act. Plaintiff brought suit on May 19, 1975 alleging that defendants[3] had failed to comply with the disclosure requirements of the Act and Regulation Z in several respects. Following cross-motions for summary judgment, the case was referred to Bankruptcy Judge Ezra Cohen, sitting as special master. The special master made recommendations on four issues. The district court, "find [-ing] itself in agreement with the special master's conclusion that the defendant failed to disclose the fact that it asserted a security interest in returned or unearned premiums of the automobile insurance" in violation of 12 C.F.R. §226.8(b)(5), adopted the special master's recommendation on that issue and awarded the plaintiff judgment in the amount of $1000 and $900 in reasonable attorney's fees against defendant Ford. It is from this order of final judgment, founded solely on the return or unearned insurance premium issue, that Ford now appeals.

Two provisions from the combined disclosure statement and installment contract are important in the resolution of this case. Paragraph 13 on the face of the disclosure statement provides as follows:

> (13) Security Interest: Seller shall have a security interest under the Uniform Commercial Code in the Property (described above)[4] and in the proceeds there-

[3] Defendant Allen-Russell was voluntarily dismissed from this suit and is not a party to this appeal.

[4] The Property is defined as a used 1970 MG Midget and identified by serial number.

of to secure the payment in cash of the Total of Payments and all other amounts due or to become due hereunder.

The reverse side of the document, headed "Additional Terms and Conditions," provides in paragraph 18[5] that

[5] The full text of paragraph 18 is as follows:

RISK OF LOSS—INSURANCE

The Property shall be at Buyer's risk. Buyer shall obtain and maintain at his own expense for so long as any amount remains unpaid hereunder insurance protecting the interests of Buyer and Seller against loss, damages or destruction of or to the Property in such forms and amounts as Seller may require. The inclusion of a charge for insurance herein shall not relieve Buyer of such obligation but only authorizes Seller to attempt to obtain the requested coverages on Buyer's behalf through an authorized agent; provided, if Seller is unable to obtain the requested coverages for the term indicated for the amount included herein, Seller may (i) obtain such coverages for such term, if any, as the insurance carrier to whom Seller shall apply therefor will provide for such amount, or (ii) credit such amount to the final maturing instalments hereunder in inverse order of maturity or as otherwise required by law.

If Buyer fails to obtain or maintain such insurance, or fails to furnish satisfactory evidence thereof upon request, Seller may, but shall not be required to, and without prejudice to his rights hereunder if he does not, obtain such insurance protecting either the interests of Buyer and Seller or the interests of Seller only. In such event, Buyer agrees to reimburse Seller for the cost thereof forthwith upon demand together with interest thereon at the highest lawful contract rate.

Buyer hereby assigns to Seller any monies payable under such insurance by whomever obtained, including returned or unearned premiums, and Seller hereby is authorized on behalf of both Buyer and Seller to receive or collect same, to endorse checks or drafts in payment thereof, to cancel such insurance or to release or settle any claim with respect thereto. The proceeds from such insurance, by whomever obtained, shall be applied toward replacement of the Property or payment of the indebtedness hereunder in the sole discretion of Seller. (Emsis added.)

> Buyer hereby assigns to seller any monies payable under such insurance, by whomever obtained, including returned or unearned premiums. . . . The proceeds from such insurance, by whomever obtained, shall be applied toward replacement of the Property or payment of the indebtedness hereunder in the sole-discretion of Seller.

Appellant contends, primarily, that the assignment created by paragraph 18 does not constitute a security interest and therefore need not be disclosed and, secondarily, that if the assignment is held to constitute a security interest, it is adequately disclosed in paragraph 13 on the face of the contract. We reject both contentions.

I. *Creation of a Security Interest*

Appellant's first argument seems to be that because the returned or unearned insurance premiums are "assigned," they cannot be the subject of a security interest. Appellant further devotes considerable effort to an analysis of the Uniform Commercial Code as enacted in Georgia to establish that assignments of proceeds of insurance are excluded from treatment as "security interests" under Georgia law.

Fortunately we need not tarry long over the complexities of Georgia's commercial law, for appellant's argument has been anticipated by a recent decision of this court. In *Elzea* v. *National Bank of Georgia,* 570 F.2d 1248 (5th Cir. 1978), we considered whether an assignment of homestead and exemption rights constituted a security interest for purposes of Regulation Z. Our discussion in *Elzea* is precisely apposite here:

> The Truth-in-Lending Act requires a creditor to disclose a "description of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit." 15 U.S.C. §1639(a)(8).

> Regulation Z, promulgated by the Federal Reserve Board pursuant to authority granted in the Act, defines "security interest" and "security" to "mean any interest in property which secures payment or performance of an obligation." 12 C.F.R. § 226.2(gg). The definition also lists some interests in property that are security interests. The assignment in this case, although not specifically listed, is a security interest because it is an interest in property which secures payment of an obligation.

570 F.2d at 1249. Regulation Z itself provides that the terms "security interest" and "security" "include, but are not limited to, security interests under the Uniform Commercial Code . . . ." 12 C.F.R. 226.2(gg).[6] We stressed in *Elzea* that technical characterizations "are not determinative of whether a creditor holds a security interest under Regulation Z's definition." *Id.* at 1249-50. Rather, "[t]his question should be answered by examining the rights which the creditor has." *Id.* at 1250. We noted as significant factors whether the creditor has an interest in property and whether "the assignment helps to secure payment of the obligation." *Id.* Even property which "cannot presently be identified and may not yet exist" may be the subject of

[6] Section 226.2(gg) provides as follows:

> "Security interest" and "security" mean any interest in property which secures payment or performance of an obligation. The terms include, but are not limited to, security interests under the Uniform Commercial Code, real property mortgages, deeds of trust, and other consensual or confessed liens whether or not recorded, mechanic's, materialmen's, artisan's, and other similar liens, vendor's liens in both real and personal property, the interest of a seller in a contract for the sale of real property, any lien on property arising by operation of law, and any interest in a lease when used to secure payment or performance of an obligation.

a security interest for Regulation Z purposes. "What is important is that the . . . privilege is valuable to the debtor and he has given up this valuable privilege to the extent of his debt." *Id.*

[2] The application of these principles to the facts of this case presents no difficulty; indeed, we believe this case follows a *fortiori* from *Elzea*. Viewing the economic reality of the transaction, we have no doubt that the right to unearned property insurance premiums can be a valuable economic right. Appellant's brief itself points out that "[p]ractically every secured loan is affected by insurance" and that an "assignment of returned or unearned premiums of insurance appears in virtually all consumer paper secured by property when insurance is required." Appellant's Brief at 17. We think it clear beyond peradventure that the assignment of returned or unearned premiums of physical damage insurance confers on the creditor an interest in property which helps to secure payment or performance of contractual obligations. The creditor is expressly granted "sole discretion" to apply returned premiums toward payment of the indebtedness; this discretion may, of course, be exercised in the event of default. The creditor may also apply the returned premiums toward substitute insurance on the property, thereby securing the debtor's contractual obligation to obtain and maintain insurance on the vehicle. *See* note 5, *supra*. The assignment thus meets the established definition of a security interest and must be disclosed. As the special master stated, "If the security interest was important enough for defendant to acquire, it was important enough to disclose."

[3] In a decision closely on point, *Gennuso* v. *Commercial Bank & Trust Co.*, 566 F.2d 437 (3rd Cir. 1977), *rev'g* 425 F.Supp. 461 (W.D.Pa.1976), the Third Circuit recently held

that a clause[7] containing an assignment of "any return of unearned premiums" 'create[s] a security interest in the proceeds and unearned premiums of the insurance policy covering the automobile." 566 F.2d at 440 n.2. We have recently noted the desirability of uniformity in the interpretation of truth-in-lending disclosure requirements, *see* ***McDaniel*** **v.** ***Fulton National Bank of Georgia,*** 571 F.2d 948, 951 (5th Cir. 1978) (en banc), and observe that our result is consistent not only with the decision of the Third Circuit but with the result suggested by a Federal Reserve Board staff interpretation of a closely analogous issue. *See* FRB Public Position Letter No. 377 (July 22, 1970).[8] Neither

[7] The language of that clause is set forth in full in the district court opinion. 425 F.Supp. at 466 n.10. We see no relevant distinction between that language and the language of paragraph 18 in the instant contract. In the *Gennuso* case, the district court found the clause to create a security interest, but believed the interest to be adequately disclosed. The Third Circuit agreed with the district court's determination that a security interest was created, but reversed on the adequacy of disclosure.

[8] The full text of Public Position Letter No. 377 is as follows:

Sec. 226.4(a) Proceeds of loan used to pur-
226.8(b) chase insurance.
226.8(c)

July 22, 1970

As we understand the proposed plan, your client proposes to place literature in its loan offices concerning insurance to be sold by a company unrelated to your client. Applications for a single premium lifetime accidental death and dismemberment policy are available in each office and if a customer desires to purchase such a policy with the proceeds of his loan, a check will be sent directly to the company from your client in payment of the premium. While your client will not require the purchase of this insurance and the proceeds of the policy would in no circumstances be used to pay any portion of an unpaid balance of the loan, your client would be designated as owner of

principle nor precedent nor other persuasive authority supports exclusion of interests in returned insurance premiums from the disclosure requirements of Regulation Z.

II. *Adequacy of Disclosure*

Appellant Ford's second argument is that if a security interest was created, this security interest "is a part of the proceeds of the insurance proceeds and consequently a part of the proceeds of the 1970 MG automobile which were properly disclosed." Appellant's Reply Brief at 7. As appellant would have it, A is included in B, B is included in C, therefore A is included in C. We find this application of the transitivity principle inconsistent with the logical and policy foundations of the Act. Appellant's A's, B's, and C's cannot prevail over the commands of Regulation Z.

[4-6] The "proper disclosure," in the view of appellant, was that given in paragraph 13 on the face of the disclosure statement: "Seller shall have a security interest under the Uniform Commercial Code in the Property (described above) and in the proceeds thereof . . ."[9] *See* text at note

the policy during the term of the loan. In the event of the customer's default, your client would have the right to cancel the policy and apply any premium refund to the unpaid balance of the loan.

Under the circumstances, we think it would be appropriate to disclose the loan company's ownership of the policy as a type of "security interest" under Section 226.8(b)(5) and disclosures need not be made under Section 226.4(a)(5). The amount of the premium would not be included in the "finance charge" nor would it be disclosed as an "other charge."

Tynan Smith
Assistant Director

[9] The creditor neither contends, nor could it contend, that paragraph 18, which creates the security interest and is found on the

4, *supra*. Regulation Z, § 226.8(b)(5), provides that each lender must describe or identify "the type of any security interest held or to be retained or acquired by the creditor in connection with the extension of credit, and a clear identification of the property to which the security interest relates . . . ." We have held that under this regulation, a lender must disclose the type of security interest held, retained, or acquired and the property of the borrower which serves or will serve as the collateral. *Anthony* v. *Community Loan & Investment Corp.*, 559 F.2d 1363, 1366 (5th Cir. 1977). Reference to a "security interest under the Uniform Commercial Code" has been held to be a sufficient description of a type of security interest as required by 12 C.F.R. § 226.8(b)(5). *See id.* at 1367, Elzea, *supra*, 570 F.2d at 1251; FRB Official Staff Interpretation Letter of November 22, 1976, 1976 CCH Cons.Cred. Guide ¶ 31,491. The question here is whether the reference to the MG Midget "and the proceeds thereof" is sufficient to constitute a "clear identification" of returned or unearned insurance premiums. The *Gennuso* court, in finding the disclosure in that case to be inadequate, focused on the stated purpose of the Truth-In-Lending Act, 15 U.S.C.A. § 1601, "to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit." 566 F.2d at 441. In passing the Act, Congress saw fit to require disclosure not only of the direct costs of credit, but of other terms of

reverse side of the document, satisfies the disclosure requirement of Regulation Z. So far as relevant here, required disclosures must be made together "on the *same side of the page* and above the place for the customer's signature." 12 C.F.R. § 226.8(a)(1) (emphasis added). *See Gennuso, supra*, 566 F.2d at 441-42 and n. 13; *see generally Charles* v. *Krauss Company, Limited*, 572 F.2d 544 (5th Cir. 1978).

credit as well, specifically including the existence of security interests. 15 U.S.C.A. § 1638(a)(10); *see also* §§ 1637(a)(7), 1639(a)(8). We must assess the adequacy of disclosure, at least in part, by the audience for which disclosure was intended. We cannot imagine that to an audience composed of ordinary laypersons engaged in consumer credit transactions, the contractual reference to the property and the proceeds thereof could mean more than the car itself and substitutes for the car received on its sale, exchange, or other disposition.[10] Indeed, the interpretation of the contractual terms sought by appellant would require a sesquipedalian stretch beyond the capacity of even the legal savant. We countenance no such double-talk here. Returned or unearned premiums are in no sense a substitute for the specified collateral, the MG Midget, and cannot be held to constitute its proceeds. As the special master put it, "These premiums might be proceeds of the insurance policy, but they are not proceeds of the car." We have examined the words of Ford's disclosure under every model from A to T, but fail under each to find compliance with the requirements of Regulation Z.

III. *Statutory Damages*

The district court, finding a violation of the Act and of Regulation Z, awarded plaintiff $1,000 in damages and $900 in attorney's fees. Appellant notes that the Act provides for civil liability in the amount of twice the finance charge, but in no event less than $100 nor more than $1,000. 15 U.S.C.A. § 1640. As disclosed by the contract, the

[10] Georgia has recently amended its definition of "proceeds" under the U.C.C. to provide specifically that "Insurance payable *by reason of loss or damage to the collateral* is proceeds . . ." Ga. Code Ann. § 109A-9-306. (Acts 1978, eff. July 1, 1978) (emphasis added). This provision is in full accord with our reading of the contractual language.

finance charge in this case was only $282.57, so that the maximum amount of civil liability would be $565.14, plus reasonable attorney's fees. The plaintiff has already received in settlement from a co-defendant, Allen-Russell Ford, Inc., one-half of the civil liability in the amount of $282.57 and claimed only the balance in the amount of $282.57 in her Motion for Summary Judgment. Plaintiff concedes that she is entitled only to statutory damages of $282.57 plus reasonable attorney's fees of $900. The judgment is modified accordingly, and, as modified, affirmed.

JUDGMENT MODIFIED AND, AS MODIFIED, AFFIRMED.

ORDER OF THE COURT OF APPEALS
JULY 28, 1978

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 76-3773

D. C. Docket No. CA 75-940A

CATHERINE EDMONDSON,

Plaintiff-Appellee,

versus

ALLEN-RUSSELL FORD, INC.,

Defendant,

FORD MOTOR CREDIT COMPANY,

Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Georgia

Before WISDOM, GOLDBERG and RUBIN, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel:

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed, as modified in accordance with the opinion of this Court:

It is further ordered that defendant-appellant pay to plaintiff-appellee, the costs on appeal to be taxed by the Clerk of this Court.

July 28, 1978

Issued As Mandate:

ORDER OF THE COURT OF APPEALS
OCTOBER 6, 1978

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

TO ALL PARTIES LISTED BELOW:

NO. 76-3773—CATHERINE EDMONDSON vs.
ALLEN-RUSSELL FORD, INC.,
FORD MOTOR CREDIT COMPANY

Dear Counsel:

This is to advise that an order has this day been entered denying the petition ( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition ( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,
EDWARD W. WADSWORTH, Clerk

By /s/ SALLY HAYWARD
Deputy Clerk

cc: Messrs. Morton P. Levine
James R. Beach
Mr. Jay E. Loeb

ORDER OF THE DISTRICT COURT
AUGUST 27, 1976

IN THE
UNITED STATES DISTRICT COURT
Northern District of Georgia
Atlanta Division

CATHERINE EDMONDSON,
Plaintiff,
vs.
ALLEN-RUSSELL FORD, INC. and FORD MOTOR CREDIT COMPANY,
Defendants.
} CIVIL ACTION NO. C75-940A

ORDER

This truth in lending action is before this court for review of the special master's recommendation of April 29, awarding judgment in favor of the plaintiff in the amount of $1,000 against defendant Ford Motor Credit Co. and of his recommendation of May 14, awarding the plaintiff $900 in reasonable attorney's fees. Also before this court is the master's recommended dismissal of the complaint as it relates to Allen-Russell Ford, Inc.

Upon review of the record, the court finds itself in agreement with the special master's conclusion that the defendant failed to disclose the fact that it asserted a security interest in returned or unearned premiums of the automobile insurance. Such a failure to dissolve is a violation of 12 C.F.R. 226.8(b)(5). The court therefore ADOPTS the special master's recommendation on this issue and AWARDS the plaintiff judgment in the amount of $1,000 and $900 in reasonable attorney's fees against de-

fendant Ford Motor Credit Company and DISMISSES the complaint as it relates to defendant Allen-Russell Ford, Inc.

So ORDERED, this 27th day of August, 1976.

/s/ NEWELL EDENFIELD
NEWELL EDENFIELD
United States District Judge

RECOMMENDATION OF SPECIAL MASTER
APRIL 29, 1976

IN THE
UNITED STATES DISTRICT COURT
For the Northern District of Georgia
Atlanta Division

CATHERINE EDMONDSON,
Plaintiff,
vs.
ALLEN-RUSSELL FORD, INC. and FORD MOTOR CREDIT COMPANY,
Defendants.

CIVIL ACTION NO. C75-940A

RECOMMENDATION OF SPECIAL MASTER

Before the Court is an earlier recommendation of the dismissal of Allen-Russell Ford, Inc. pursuant to settlement agreement. Also before the Court are motions for summary judgment by plaintiff and defendant Ford Motor Credit Company.

Plaintiff's first contention centers on the undisclosed acceleration clause. That clause provides that on default, "Seller shall have the right to declare all amounts due or to become due hereunder to be immediately due and payable." This is clearly an undisclosed default charge. *Whitehead* v. *Harry White Ford,* C75-695A (Freeman, J. 1976).

Plaintiff's second contention is that the defendant violated the Act by failing to itemize the finance charge even though the finance charge is composed of only a single element. In the case of a credit sale of goods, such as in the

case at bar, that single element is called time price differential. In the case of a loan, that single element is called interest.

With respect to both credit sales and credit loans, Regulation Z requires disclosure of "the total amount of the finance charge with description of each amount included, using the term finance charge." Regulation Z § 226.8(c)(8) and (d)(3). This is not the clearest language. It does not appear to contemplate the single-element finance charge. It is at least ambiguous as to whether the finance charge must have a dual label when composed of a single element.

Very early in the history of truth in lending, in 1969, a pamphlet was published entitled *What You Ought to Know about Truth in Lending*. The pamphlet stated: "Material in this pamphlet has been prepared by the Board of Governors of the Federal Reserve System." Attached are relevant portions of that pamphlet. The Board gave very clear examples in Exhibits A, B, C and D, that where the finance charge contained a single element, the label "finance charge" alone should be used to describe that element. This pamphlet was issued before any contrary court decisions.

It is true that the pamphlet should not be totally relied upon as a substitute for the regulation, for business transactions and state law vary. But no such variation could affect the accuracy of the portrayal of the single label "Finance Charge."

Furthermore, in staff position letter No. 682, dated April 25, 1973, it was stated that only the single label "Finance Charge" was to be given to the single element finance charge and that to give a dual label could obscure the clear impact of the disclosure of finance charge and therefore be misleading and confusing. Attached hereto is a copy of that letter.

This district has never spoken on the issue of whether the single element finance charge should be given a dual label. But it has approved many disclosure statements where only the single label was given to the single element finance charge.

There is in this district one recommendation which treated the point. In *Paer* v. *First National Bank of Tucker*, C74-1402A, as a second reason for holding for the plaintiff, the Special Master noted that authority in other districts and staff letters required itemization of the finance charge even though composed of a single element, interest. The Special Master was correct in his citations of authority from other districts, but he did not cite staff position letter No. 682. In any event, that recommendation did not become precedent. Judge Freeman entered judgment on the recommendations because they were unopposed.

This Special Master notes the alternate holdings clearly supporting plaintiff's contentions in *Ives* v. *W. T. Grant Company*, 522 F.2d 749 (2nd Cir. 1975); *Ljepava* v. *M.L.S.C. Properties, Inc.*, 511 F.2d 935 (9th Cir. 1975); *Johnson* v. *Associates Finance, Inc.*, 369 F.Supp. 1121 (S.D. Ill. 1974); *Myers* v. *Clearview Dodge Sales, Inc.*, 384 F.Supp. 722 (E.D. La. 1974). This Special Master also notes that each of these decisions rules contrary to the law of this District on other points.

About four months after the decision in *Ives* v. *W. T. Grant, supra,* the Board of Governors promulgated an interpretive ruling that there is no need for description or identification where the finance charge is composed of a single element. Attached hereto is a copy of that ruling.

Now this Special Master does not recommend giving weight to letters written by Federal Reserve Board staff employees criticizing court decisions. *Willis* v. *Town*

Finance Corp. of Atlanta, C74-1489A (Moye, J.). But this Special Master thinks courts should be reluctant to declare that settled and consistent interpretations of the Board are erroneous. *Philbeck* v. *Timmers Chevrolet Company,* 499 F. 2d 971 (5th Cir. 1974).

Plaintiff contends that the Board's Interpretive Ruling is plain wrong. Plaintiff goes to the Act itself and cites 15 USC 1638(a)(6). That section provides that a creditor must disclose:

> . . . the amount of the finance charge, which may in whole or in part be designated as a time price differential or any similar term to the extent applicable.

With the permissive "may" this section certainly does not stand unambiguously in support of plaintiff's contention.

Plaintiff argues that legislative history of the Truth in Lending Act supports his contentions. But to the Special Master, the Regulations and interpretations of the Board are much more important in fixing the meaning of the Act. The Act delegates to the Board the power to make regulations containing:

> . . . such classifications, differentiations, or other provisions, and may provide for such adjustment and exceptions for any class of transactions as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. 15 USC 1604.

The Act also provides:

> Regulations of the Board need not require that disclosures pursuant to this part be made in the order set forth in this part, and may permit the use of terminology different from that employed in this part if it conveys substantially the same meaning. 15 USC 1632.

As Judge Edenfield noted in *Roberts* v. *National School of Radio & Television Broadcasting,* 374 F.Supp. 1266, 1269 (N.D. Ga. 1974)

> The Supreme Court has only recently observed that the authority and expertise which the Federal Reserve Board exerts in developing the enforcement provisions of the TIL is nearly absolute *Mourning* v. *Family Publications Service, Inc.,* 411 U.S. 356, . . . (1973).

Since the Board has stated its interpretation first and since this District Court has not held to the contrary, this Special Master concludes that the single label, "Finance Charge," is sufficient where the finance charge contains only a single element.

Plaintiff's third contention is that defendant failed to disclose its security interest in insurance proceeds, unearned insurance premiums, and personalty left in the car after repossession. Regulation Z § 226.8(b)(5) requires a clear identification of the property to which the security interest relates. The disclosed clause shows a security interest in the car "and in the proceeds thereof." The undisclosed clause dealing with property damage insurance to be obtained by Buyer for the protection of the interest of buyer and seller, reads:

> Buyer hereby assigns to Seller any monies payable under such insurance, by whomever obtained, including returned or unearned premiums, and Seller hereby is authorized on behalf of both Buyer and Seller to receive or collect same, to endorse checks or drafts in payment thereof, to cancel such insurance or to release and settle any claim with respect thereto. The proceeds from such insurance, by whomever obtained, shall be applied toward replacement of the property or payment of the indebtedness hereunder in the sole discretion of seller.

First, let us deal with insurance proceeds in case of damage to the car. The question is whether those insurance proceeds are encompassed in the disclosed security interest in the car "and in the proceeds thereof." This Special Master concludes that proceeds from the involuntary, as well as the voluntary, disposition of the car are encompassed. Ga. Code Ann. § 109A-9-306; *PPG Industries, Inc.* v. *Hartford Fire Insurance Co.*, 384 F. Supp. 91 (S.D. N.Y. 1974); *Fireman's Fund American Ins. Co.* v. *Ken-Lori Knits, Inc.*, 399 F. Supp. 286 (E.D. N.Y. 1975). The equation of voluntary and involuntary disposition is ancient in the law. This is revealed in the well-known history of the relationship between the common law actions of trover and conversion on the one hand and assumpsit on the other. Where property was tortiously disposed of, the injured party could presume that the wrongdoer had promised to buy it. Thus, the injured party could waive the tort and sue assumpsit.

The next question is whether the defendant took a security interest in returned and unearned premiums for property damage insurance. The undisclosed clause states the buyer's interest is assigned. The last sentence of that clause speaks of use of the insurance proceeds to pay the debt. In the contract, insurance proceeds appear to include returned and unearned premiums. Thus, there is an assigned for purpose of security.

Now, the question is whether returned or unearned premiums from property damage insurance are included in the disclosed security interest in the car "and the proceeds thereof." There is no precedent known to the Special Master on this point. This Special Master concludes that those premiums are not included in that disclosed security interest. Those premiums might be proceeds of the insurance policy, but they are not proceeds of the car.

Thus, the defendant has failed to disclose its security interest in returned and unearned premiums of property damage insurance. The next question is whether this violation is so minimal that it should be disregarded. The answer is no. If the security interest was important enough for defendant to acquire, it was important enough to disclose.

With regard to personal property, an undisclosed clause of the contract provides:

> Any personalty in or attached to the Property when repossessed may be held by Seller without liability and buyer shall be deemed to have waived any claim thereto unless written demand by certified mail is made upon Seller within 24 hours after repossession.

This clause is not a part of any clause dealing with indebtedness. It does not create a security interest in the personalty to secure payment of the debt.

WHEREFORE, it is recommended that plaintiff's motion for summary judgment be granted and that plaintiff have judgment in the amount of $1,000 plus reasonable attorneys fees.

Plaintiff's attorney is directed to submit within ten days an affidavit of legal services.

This 29th day of April, 1976.

/s/ Ezra H. Cohen
Ezra H. Cohen
BANKRUPTCY JUDGE,
Sitting as Special Master

(Note: Exhibits omitted in printing.)

ACCOUNT NO. 2175 **AUTOMOBILE RETAIL INSTALMENT CONTRACT** DATE 4/24/75

Buyer (and Co-Buyer) - Name and Address (Include - County and Zip Code)

Catherine T. Edmondson
5675 Roswell Rd. Apt # 53 H
Alanta, Ga. 30342

Seller - Name and Address

ALLEN-RUSSELL FORD, INC.
5920 Roswell Road
Atlanta, Georgia 30328

Buyer (which means the undersigned Buyers and Co-Buyers, jointly and severally) having been quoted both a time sale price and a lower cash price hereby purchases from Seller on a time price basis, upon the terms and conditions set forth on the face and reverse side hereof, the following property (hereinafter called the "Property") delivery and acceptance of which in good order hereby are acknowledged by Buyer.

New or Used	Year and Make	Series	Body Style	No. Cyl.	If Used, Trade-In Company	Manufacturer's Serial Number	Use For Which Purchased
U	70 MG	Midget	Conv.	4		[redacted] GAN5UA83829-G	☒ Personal ☐ Business ☐ Agriculture

INCLUDING: ☐ Radio ☐ Air Conditioner ☐ Automatic Transmission ☐ Power Steering ☐ Power Brakes ☐ Power Seats ☐ Power Windows ☐

DESCRIPTION OF TRADE IN

70 Ford T-Bird (Year and Make) $ 1395.00 (Gross Allowance)

$ N.A. (Amount Owing) (Serial Number)

OPTIONAL INSURANCE

Buyer authorizes Seller to obtain the following insurance coverages:

(a) Physical Damage Insurance: Coverages checked below for a term of ____ months (or for such shorter term as the insurer to whom Seller shall apply therefor will provide for the amount included herein) from the date hereof, payable to Buyer or Seller as interests may appear:

☐ Comprehensive ☐ Fire-Theft & Combined Additional Coverage $ N.A. (a)

☐ $ ____ Deductible Collision ☐ Towing & Labor Costs ($25.00 Limit)

(b) Credit Life Insurance on the life of Catherine T. Edmondson (Insured Person) for the term of this Contract.

☐ Provided under Ford Life Insurance Company's Group Policy No. 7200 in accordance with the "Credit Life Insurance Eligibility" section below. $ 20.00 (b)

☐ Provided by FORD LIFE INS. CO. in accordance with the separate Application, Notice, Certificate or Policy delivered to Buyer this date.

(c) Credit Accident and Health or Disability Insurance provided by

FORD LIFE INS. CO.
for the term of this Contract in accordance with the separate Application, Notice, Certificate or Policy delivered to Buyer this date $ 36.19 (c)

(d) Other Optional Insurance (Specify) $ N.A. (d)

Total Cost of Optional Insurance $ 56.19

NOTICE TO BUYER: (1) You are not required to obtain the Credit Life and/or Credit Accident and Health or Disability Insurance for which a charge is indicated above and such is not a factor in the Seller's approval of this credit. (2) You have the right to choose the person through whom the Physical Damage insurance required under this contract is to be obtained. ACKNOWLEDGING the foregoing, BUYER requests and authorizes SELLER to obtain such insurance coverage for which an amount is included above.

Buyer Catherine Edmondson 4/24/75 (Date of Insurance to be included only if signed by Buyer and dated)

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

CREDIT LIFE INSURANCE ELIGIBILITY

Credit life insurance under Ford Life Insurance Company's Group Policy No. 7200 is available only on the life of one natural person who is obligated to make payments under this retail instalment instrument and who is under the age of 66 on the date hereof. Benefits will be limited to a refund of premiums if there is no person eligible for such insurance, or if death results from suicide within one year from the date hereof or from certain pre-existing diseases or conditions within ninety days from the date hereof. For details see Notice of Proposed Group Credit Life Insurance on reverse side of Buyer's Copy.

The foregoing contract hereby is accepted by the Seller and assigned to Ford Motor Credit Company in accordance with the terms of the Assignment set forth on the reverse side hereof.

ALLEN-RUSSELL FORD, INC.

Seller By [signature]

DETAILS OF TRANSACTION

(1) Cash Price		$ 2262.00 (1)
Cash Down Payment	$ N.A.	
Trade-In (See Opposite)	$ 1395.00	
(2) Total Down Payment		$ 1395.00 (2)
(3) Unpaid Balance of Cash Price (Difference between Items 1 & 2)		$ 867.00 (3)
(4) Other Charges		
Optional Insurance (See Opposite)	$ 56.19	
Official Fees	$ N.A.	
Taxes (Not Included in Cash Price)	$ N.A.	
License, Title & Registration Fees	$ N.A.	
Total Other Charges		$ 56.19 (4)
(5) Unpaid Balance - Amount Financed		$ 923.19 (5)
(6) FINANCE CHARGE		$ 282.57 (6)
(7) ANNUAL PERCENTAGE RATE 26.95 %(7)		
(8) Total of Payments (Sum of Items 5 & 6)		$ 1205.76 (8)

(9) Payment Schedule: Buyer hereby agrees to pay to Seller the Total of Payments (Item 8 above) in 24 monthly instalments of $ 50.24 each and one final instalment of N.A. on the like day of each month commencing June 6 19 75 or, if no date is specified, one month after the date of this contract.

(10) Balloon Payment(s) $ [redacted]
(Insert amount of each payment that is more than twice the amount of any otherwise regularly scheduled equal payment)
A balloon payment may be refinanced only upon such terms and conditions as the then parties to this contract may agree as of its due date.

(11) Deferred Payment Price (Sum of Items 1, 4 & 6) $ 2600.76 (11)

(12) Delinquency Charges: Buyer hereby agrees to pay a delinquency charge on each instalment in default for more than 10 days in the amount of 5% thereof or $5.00, whichever is less, plus such expenses incurred by Seller in effecting collection hereunder as may be allowed by law.

(13) Security Interest: Seller shall have a security interest under the Uniform Commercial Code in the Property (described above) and in the proceeds thereof to secure the payment in cash of the Total of Payments and all other amounts due or to become due hereunder.

(14) Prepayment Rebate: Buyer may prepay his obligations under this contract in full at any time prior to maturity of the final instalment hereunder, and, if he does so, shall receive a rebate of the unearned portion of the Finance Charge computed under the sum of the digits method after first deducting an acquisition fee of $25.00. No rebate will be made if the amount thereof is less than $1.00.

(15) Additional Terms and Conditions: The additional terms and conditions set forth on the reverse side hereof are a part of this contract and are incorporated herein by reference.

NOTICE TO THE BUYER

Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign.

Buyer acknowledges receipt of a true and completely filled in copy of this contract at the time of signing.

Buyer Catherine Edmondson

Buyer

FOR SELLER'S USE ONLY

INSURANCE COVERAGE (TO BE COMPLETED, IF PHYSICAL DAMAGE INSURANCE IS NOT INCLUDED IN THE ABOVE CONTRACT.)

NAME OF INSURANCE AGENT Amica Mutual Ins Co (Jim Dodd Ag.) TELEPHONE NO. 325-5600

ADDRESS OF INSURANCE AGENT 50 Executive Park Alanta, Ga.

NAME OF INSURANCE COMPANY ____ POLICY NO. ____

CHECK COVERAGES

☐ Comprehensive ☐ $ ____ Deductible Collision ☐ Fire-Theft & Combined Additional Coverage

SALESMAN ____ (Please Print or Type Name)

KEY-1	KEY-6	OD	HP

SFS 11210 PREVIOUS EDITIONS MAY NOT BE USED

ORIGINAL

ADDITIONAL TERMS AND CONDITIONS

14. ASSIGNMENT
[redacted]

15. USE OF PROPERTY - WARRANTIES
[redacted]

16. RISK OF LOSS - INSURANCE
[redacted]

17. DEFAULT
[redacted]

18. GENERAL
[redacted]

GUARANTY

For Value Received, each of the undersigned guarantors, jointly and severally, guarantees the prompt and unconditional payment, performance and discharge of all Buyer's obligations under the within contract and co-assents that in the event of default of said obligations by Buyer, any notice or demand the full amount of said obligations unpaid hereunder together with a reasonable attorney's fee (15% of the amount then due, or if prohibited, the maximum permitted by law) if placed with an attorney for collection, may be immediately made or instituted against the undersigned without the necessity at the time of payment of the said contract, or any change in the manner, place or terms of payment thereof, or the release, settlement or compromise of any with any party liable for the payment thereof, or the release or non-perfection of any security thereunder. The holder of the within contract shall not be required to exhaust its recourse against Buyer or any other person or any security that it may have at any time before being entitled to payment from the undersigned hereunder. Each of the undersigned guarantors hereby waives notice of the acceptance of this guaranty and of presentment, demand and protest and notices of non-payment and dishonor, and any other demands and notices required by law, and waives all setoffs and counterclaims.

Guarantor ____ Address ____

Guarantor ____ Address ____

ASSIGNMENT

The Seller named on the face of this contract sells, assigns, and transfers to Ford Motor Credit Company (hereinafter called "FMCC") his, its or their entire right, title and interest in and to the within contract and the Property described therein and authorizes FMCC to do every act and thing necessary to collect and discharge obligations arising out of or included in said contract and assignment. In order to induce FMCC to accept assignment of the contract, Seller represents to the Buyer named therein that it is genuine, legally valid and enforceable and arose from the sale of said Property; said Property and Seller made all disclosures required by law prior to the execution thereof by Buyer; the Property is not a motor vehicle required to be registered, and the last of the Seller's obligations required by said contract to be performed has been completed; the information contained in the contract was true and correct as of the date it was executed by Buyer and furnished to FMCC by the Seller and was true and correct as of the date Seller purchased the same; Seller has good title to said Property and a lawful cash price the within contract was complete in all respects and Seller made all disclosures required by law prior to the execution thereof by Buyer; the Property is not a motor vehicle required to be registered, and the last of the Seller's obligations required by said contract to be performed has been completed; the information contained in the contract was true and correct as of the date it was executed by Buyer and furnished to FMCC by the Seller and was true and correct as of the date Seller purchased the same; Seller has good title to said Property and a lawful cash price the within contract sells for; Seller has the right to assign said Property free and clear of all liens and encumbrances and the Seller has not done any act which would impair the validity or collectibility of the contract; title to said Property is vested in the Seller free of all liens and encumbrances except as shown on the face hereof; Seller will defend the same against the claim of any person; and will execute such certificates of title, affidavits, and other documents as may be required to enable FMCC or the Seller to obtain a certificate of title to said Property showing no lien or encumbrance for the benefit of FMCC or the Seller has been or will be applied for forthwith if permitted by law. If there is any breach of any of the foregoing warranties, without regard to the Seller's knowledge or lack of knowledge with respect thereto or FMCC's reliance thereon, the Seller hereby agrees unconditionally to purchase said contract from FMCC upon demand, for the full amount then owed thereon, whether said contract shall be in default or not. Seller further agrees that in event Buyer, or any other person makes a claim against FMCC alleging facts which, if true, would constitute a breach of any of the foregoing warranties, Seller shall assume the defense of such claim and shall indemnify and save FMCC harmless from all loss, cost and expenses arising therefrom, in addition, this assignment includes the provisions of the paragraph headed by the Seller below, provided that if none of the paragraphs below has been signed by Seller, this assignment shall include the provisions of the paragraph below and entitled "Repurchase". The liability of the Seller shall not be affected by any extension, renewal or other change in the time of payment of the said contract, or any change in the manner, place or terms of payment thereof, or the release, settlement or compromise of or with any party liable for payment thereof or security FMCC may, at any time have before being entitled to payment from the Seller hereunder. The Seller waives notice of the acceptance of this assignment and notices of non-payment and non-performance of the contract and any other notices required by law and agrees that all setoffs and counterclaims whatsoever first occurs.

☐ Initial "WITHOUT RECOURSE" The assignment of said contract is and shall be without recourse against the Seller, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

☐ Initial "REPURCHASE" The Seller guarantees payment of the full amount remaining unpaid under said contract, and covenants, if default be made in payment of any payment due thereunder by Buyer, the full amount then unpaid to FMCC upon demand, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

☐ Initial "LIMITED REPURCHASE" The Seller guarantees payment of the full amount remaining unpaid under said contract, and covenants, if default be made in payment of any instalment thereunder by Buyer, the full amount then unpaid to FMCC, upon demand, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted provided, that if the Buyer satisfactorily pays each of the first ____ instalments coming due under the within contract, this assignment shall thereafter be without recourse against the Seller, except as otherwise provided by the terms of the Ford Motor Credit Company Retail Plan in effect at the time this assignment is accepted.

☐ Initial "PARTIAL GUARANTY" Notwithstanding the terms of the Ford Motor Credit Company Retail Plan, the Seller unconditionally guarantees payment of the full amount remaining unpaid under said contract, and agrees to purchase said contract from FMCC upon demand, for the full amount then unpaid whether said contract shall then be, or not be, in default, provided, however, at the time of any such demand by FMCC, Seller may, at his election, pay to FMCC the sum of $ ____ in consideration of being released from such guaranty and obligation to purchase, in such event, the assignment of said contract is without recourse against the Seller, except as otherwise provided by the terms of the Ford Motor Credit Plan in effect at the time this Assignment is accepted.

☐ Initial "FULL GUARANTY" Notwithstanding the terms of the Ford Motor Credit Company Retail Plan, the Seller unconditionally guarantees payment of the full amount remaining unpaid under said contract, and agrees to purchase said contract from FMCC, upon demand, for the full amount then unpaid whether said contract shall then be, or not be, in default.

Supreme Court, U. S.
FILED
MAR 23 1979
, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1072

FORD MOTOR CREDIT COMPANY,
Petitioner,

versus

CATHERINE EDMONDSON,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Jay E. Loeb
GERSHON, RUDEN, PINDAR
and OLIM
730 Healey Building
P.O. Box 2872
Atlanta, Georgia 30301
(404) 524-4991
Attorney for Respondent

SCOFIELDS' QUALITY PRINTERS, P. O. BOX 53096, N. O., LA. 70153 - 504/822-1611

TABLE OF CONTENTS

Page

STATEMENT OF FACTS 1

REASONS FOR DENYING WRIT:

I. The Decision Below Correctly Construes The Truth-In-Lending Act 4

A. The Act Is To Be Liberally Construed In Favor Of The Consumer 4

B. An Assignment Of Unearned Insurance Premium Is A Security Interest Under The Act 6

II. The Decision Below Did Not Create Any New Test For Construction Of The Act 7

III. The Decision Below Adheres To The Purpose Of The Act And Will Have No Substantial Impact On Consumer Credit Transactions 8

CONCLUSION 9

CERTIFICATE OF SERVICE 10

APPENDIX:

Automobile Retail Installment Contract Between Mr. and Mrs. Gary Reece and Allen-Russell Ford, Inc. 1a

Typical Damage Insurance Policy with American Security Insurance Co., Cynthia Sallett and Ford Motor Credit Company 3a

TABLE OF AUTHORITIES

CASES: Page

Charnita, Inc. v. F.T.C., 479 F.2d 684 (3rd Cir. 1973) 5

Gennuso v. Commercial Bank & Trust Co., 566 F.2d 437 (3rd Cir. 1977) 3,4,6,8

Mason v. General Finance Corp. of Virginia, 542 F.2d 1226 (4th Cir. 1976) 5

Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973) 5,7,8

Pennino v. Morris Kirschman & Co., Inc., 526 F.2d 367 (5th Cir. 1976) 5

Sellers v. Wollman, 510 F.2d 119 (5th Cir. 1975) .. 5

Willis v. American National Stores, 350 F.Supp. 173 (N.D. Ga. 1972) 5

STATUTES AND REGULATIONS:

15 USC §1601 5

15 USC §1639(a)(8) 5

15 USC §1640(e) 4

12 C.F.R. §226.2(gg) 6

OTHER AUTHORITIES:

FRB Staff Letter No. 377 (1970) 4,6

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

No. 78-1072

FORD MOTOR CREDIT COMPANY,
Petitioner,

versus

CATHERINE EDMONDSON,
Respondent.

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Respondent, CATHERINE EDMONDSON, prays that this Court decline to issue a Writ of Certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, reported at 577 F.2d 291.

STATEMENT OF FACTS

The Respondent desires to supplement and correct the Petitioner's Statement of Facts in three respects.

First, the description of security interest on the face of the disclosure statement at Paragraph 13 provides that the:

> "Seller shall have a security interest under the Uniform Commercial Code in the property (described above) and in the proceeds thereof . . ."

"Property" is defined on the disclosure statement as 1970 MG Midget Automobile. A-24.

Second, the amount of credit insurance premiums on the typical motor vehicle installment sales contract will usually exceed $1,000.00 as shown by Appendix 1a, credit life and disability insurance premiums on new cars usually exceed $300.00 over the anticipated duration of the contract, and single interest property insurance is about $1,000.00 for a three-year contract. Respondent's Appendix 3. New cars are now financed over four years, and the premium costs are accordingly higher. Thus, Respondent must take exception to the Petitioner's contention that the premiums have little economic value.

Third, the Petitioner's statement on page 5 of its Petition that the creditor cannot cancel property insurance and that the buyer's failure to make payments on the "loan" does not cancel the insurance coverage is not always correct. The property insurance policy that Petitioner had is not in the record. A typical single-

interest property insurance policy procured by Petitioner in Georgia in 1977, a copy of which is attached as Appendix 4a, provides, in Paragraph H, that the creditor can cancel the policy for any reason upon thirty days' written notice and that the policy is automatically terminated upon sale or repossession of the collateral. Paragraph 19 of the contract provides that the seller has a right to repossess the collateral "in the event Buyer defaults in any payment." A-25.

Respondent submits that the facts show that a single-interest property insurance policy clearly secures payment of the debt and is not economically insignificant.

REASONS FOR DENYING THE WRIT

The Petitioner earnestly requests that this Court grant the writ of certiorari to bring some order to the chaotic condition existing in the lower federal courts. The Respondent respectfully submits that no basis is shown under Rule 19 of this Court for granting the writ of certiorari sub judice.

First, there is no conflict among the Courts of Appeal on the issue before this Court. See *Gennuso v. Commercial Bank & Trust Co.*, 566 F.2d 437 (3rd Cir. 1977), upon which the Fifth Circuit relied.

Second, the Fifth Circuit's opinion is consistent with the position of the Federal Reserve Board staff. See

FRB Public Position Letter No. 377. No administrative regulation or interpretation has been declared unconstitutional in the case sub judice.

Third, the Fifth Circuit opinion is of little future importance since Ford Motor Credit Company changed its forms in Atlanta prior to July, 1978, and The Truth-In-Lending Act ("the Act") has a short one-year statute of limitations on money damage actions. 15 USC §1640(e). All prudent creditors, like Petitioner, changed their disclosure forms after the *Gennuso* decision of the Third Circuit.

Finally, there has been no conflict with past decisions of this Court.

For these reasons, there is no overriding reason why this Court should grant certiorari in the case sub judice. Moreover, the decision of the Fifth Circuit is also correct as a matter of law for the following reasons.

I.

The Decision Below Correctly Construes The Truth-In-Lending Act.

A. The Act Is To Be Liberally Construed In Favor Of The Consumer.

When, in 1968, the Congress enacted The Truth-In-Lending Act, its stated purpose was "to assure a

meaningful disclosure of credit terms available to him and avoid the uninformed use of credit". 15 USC §1601; *Mason v. General Finance Corp. of Virginia*, 542 F.2d 1226 (4th Cir. 1976). And, in doing so, it acted in response to the revelation that consumers remained remarkably ignorant of the nature of their credit obligations and of the costs of deferring payment. *Id*, citing *Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 363 (1973).

The Act is remedial in nature and, as such, its terms are to be liberally construed in favor of the consumer. *Sellers v. Wollman*, 510 F.2d 119, 122 (5th Cir. 1975). Cf. *Mourning v. Family Publications Service, Inc., supra.*

In addition to the finance charge and annual percentage rate, Congress also required the creditor to disclose any security interest held or to be retained by the creditor incident to the extension of credit. 15 USC §1639(a)(8). Federal courts have applied this provision of the Act and its counterparts on open-end credit sales and loans to require a clear identification of the property to which the security interest relates. See, e.g. *Pennino v. Morris Kirschman & Co., Inc.*, 526 F.2d 367, 371 (5th Cir. 1976); *Charnita, Inc. v. F.T.C.*, 479 F.2d 684 (3rd Cir. 1973). The underlying premise of all these cases is that disclosure of all security interest is important so the consumer may compare the various credit terms available to him or her. *Willis v. American National Stores*, 350 F. Supp. 173 (N.D. Ga. 1972).

B. *An Assignment Of Unearned Insurance Premiums Is A Security Interest Under the Act.*

The assignment of unearned insurance premiums is clearly an interest in property which secures payment of the underlying debt. *Gennuso v. Commercial Bank & Trust Co.*, 566 F.2d 437 (3rd Cir. 1977). Such a contractual right is deemed a consensual lien under Regulation Z §226.2(gg), 12 C.F.R. §226.2(gg). It can be analogized to an assignment of rents for a real estate mortgage, which is not activated until certain specified events occur.

The Federal Reserve Board staff has held that a creditor's ownership of an insurance policy during the term of a loan was a "security interest" to be disclosed under the Act. FRB Staff Letter No. 377 (1970). In that letter, the proceeds of the policy were not payable to the lender, but in the event of a loan default, the lender would have the right to cancel the policy and apply any premium refund to the unpaid balance of the loan. *Id.*

In the case sub judice, the Petitioner had the contractual right to receive any propert, insurance proceeds plus unearned property insurance premiums, more rights than the creditor had in the FRB letter. The contentions of the Petitioner and amicus curiae that the decision below is contrary to the interpretation of the Federal Reserve Board do not stand up under analysis. Furthermore, as illustrated by the sample property insurance policy used by Petitioner in Georgia in 1977 and 1978, Petitioner had the right to obtain the unearned property insurance premiums at its sole discretion upon default or cancellation by it. Appendix 4a.

The Act reflects a transition in congressional policy from a philosophy of let-the-buyer-beware to one of let-the-seller-disclose. *Mourning v. Family Publications Services, Inc., supra*, at 377. As the special master and Fifth Circuit stated, "If the security interest was important enough for defendant to acquire it, it was important enough to disclose". A-23, 7.

II.

The Decision Below Did Not Create Any New Test For Construction Of The Act.

In their construction of the Act, the federal district court in Atlanta and Court of Appeals for the Fifth Circuit applied basic statutory construction — is an assignment of unearned insurance premiums any interest in property which secures payment or performance of an obligation. There was no Georgia precedent on what type of property interest an assignment of premiums was. The federal courts then had to apply federal common law consistent with construction of the Act by other federal courts and the Federal Reserve Board to find whether a violation of the Act exists. While other federal district courts may differ with the Court of Appeals for the Third and Fifth Circuits, the

divergence in opinion does not mean the Courts of Appeal are articulating a new standard that is unconstitutionally vague.

The Respondent submits that the Court below acted properly in determining whether the subject assignment was a paper right of no value whatsoever or a valuable privilege conveyed by the debtor to his creditor.

III.

The Decision Below Adheres To The Purpose Of The Act And Will Have No Substantial Impact On Consumer Credit Transactions.

A review of the briefs filed in the case sub judice would lead one to believe that the decision below was the most significant opinion under the Act since *Mourning v. Family Publications Services, Inc., supra.* As stated before, the Petitioner changed its federal disclosure statements prior to the decision by the Court of Appeals for the Fifth Circuit. The Fifth Circuit relied in part on a 1977 decision by the Third Circuit in *Gennuso v. Commercial Bank & Trust Co., supra.* All prudent creditors should have changed their disclosure forms by now and any decision by this Court will only affect the parties before it.

Furthermore, the decision below advances the purposes of the Act by requiring disclosure of all claimed

interests in property. The Petitioner argues at page 20 of its Petition that "Lenders will, of course, disclose every economic right to avoid claims". Congress intended such a result commencing July 1, 1969, not July 28, 1979 (the date of the decision below), and on the front side of a disclosure statement, not hidden in small print on the reverse side of the disclosure statement.

CONCLUSION

For all of the reasons heretofore stated, the Respondent urges this Court to deny a writ of certiorari in this case as the Court of Appeals has correctly construed The Truth-In-Lending Act.

Respectfully submitted,

Jay E. Loeb
Gershon, Ruden, Pindar
and Olim
730 Healey Building
P.O. Box 2872
Atlanta, Georgia 30301
(404) 524-4991

Attorney for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have served three copies of the foregoing Response to Petition for Writ of Certiorari on counsel for Petitioner, Morton P. Levine, 2415 The Equitable Building, 100 Peachtree Street, Atlanta, Georgia 30303, by placing same in the United States mail in a properly addressed envelope with adequate postage thereon.

This ____ day of March, 1979.

JAY E. LOEB

ACCOUNT NO. _____

GEORGIA AUTOMOBILE RETAIL INSTALLMENT CONTRACT

DATE 6/24/78

Buyer (and Co-Buyer) - Name and Address (Include - County and Zip Code)

GARY W. REECE BETTY ANNE REECE
2507 FORREST AVE. N.W.
ATLANTA GA. 30318 FULTON

CREDITOR
Seller - Name and Address ALLEN-RUSSELL FORD, INC.
5920 ROSWELL RD. N.W.
ATLANTA, GEORGIA 30328

Assignee of Contract (See Assignment below):
Ford Motor Credit Company, The American Road, Dearborn, Michigan 48121

Buyer (which means the undersigned Buyers and Co-Buyers, jointly and severally) having been quoted both a deferred payment price and a lesser cash price hereby purchases from Seller on a deferred payment price basis, upon the terms and conditions set forth on the face and reverse sides hereof, the following property (hereinafter called the "Property") delivery and acceptance of which in good order hereby are acknowledged by Buyer.

New or Used	Year and Make	Series	Body Style	No. Cyl.	GVW	Manufacturer's Serial Number	Use For Which Purchased
NEW	1978 FORD	T-BIRD	2DR	8		8G87F296068	☐ Personal ☐ Business ☐ Agriculture ☐ _____

INCLUDING: ☐ Radio ☐ Air Conditioner ☐ Automatic Transmission ☐ Power Steering ☐ Power Brakes ☐ Power Seats ☐ Power Windows ☐ _____

DESCRIPTION OF TRADE IN

1967 CHEV. (Year and Make) $ 1074.00 (Gross Allowance)

138177A129699 (Serial Number) $ n.a. (Amount Owing)

OPTIONAL INSURANCE

Buyer authorizes Seller to obtain the following insurance coverages:

(a) Physical Damage Insurance: Coverages checked below for a term of _____ months (or for such shorter term as the insurer to whom Seller shall apply therefor will provide for the amount included herein) from the date hereof, payable to Buyer or Seller as interests may appear:

☐ Comprehensive ☐ Fire-Theft & Combined Additional Coverage
☐ $_____ Deductible Collision ☐ Towing & Labor Costs ($25.00 Limit)
$ n.a. (a)

(b) Credit Life Insurance on the life of GARY W. REECE (Insured Person) for the term of this Contract.

☐ Provided under Ford Life Insurance Company's Group Policy No. 2200 in accordance with the "Credit Life Insurance Eligibility" section below.

☐ Provided by FORD LIFE INS. CO. in accordance with the separate Application, Notice, Certificate or Policy delivered to Buyer this date.

$ 258.58 (b)

(c) Credit Accident and Health or Disability Insurance provided by FORD LIFE INS. CO. for the term of this Contract in accordance with the separate Application, Notice, Certificate or Policy delivered to Buyer this date..... $ 517.16 (c)

(d) Other Optional Insurance _____ (Itemize) $ n.a. (d)

Total Cost of Optional Insurance..... $ 775.74

NOTICE TO BUYER: (1) You are not required to obtain the Credit Life and/or Credit Accident and Health or Disability Insurance for which a charge is indicated above and such is not a factor in the Seller's approval of this credit. (2) You have the right to choose the person through whom the Physical Damage Insurance required under this contract is to be obtained. ACKNOWLEDGING the foregoing, BUYER requests and authorizes SELLER to obtain each insurance coverage for which an amount is included above.

Buyer Gary W Reece Date 6/24/78
(Cost of Insurance to be included only if signed by Buyer and dated)

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

CREDIT LIFE INSURANCE ELIGIBILITY

Credit life insurance under Ford Life Insurance Company's Group Policy No. 2200 is available only on the life of one natural person who is obligated to make payments under this retail instalment instrument and who is under the age of 66 on the date hereof. Benefits will be limited to a refund of premiums if there is no person eligible for such insurance, or if death results from suicide within one year from the date hereof or from certain pre-existing diseases or conditions within ninety days from the date hereof. For details see Notice of Proposed Group Credit Life Insurance on reverse side of Buyer's Copy.

ASSIGNMENT: The foregoing contract hereby is accepted by the Seller and assigned to Ford Motor Credit Company in accordance with the terms of the Assignment set forth on the reverse side hereof. Upon its acceptance of such contract, Ford Motor Credit Company will become a "Creditor" for purposes of the Truth-in-Lending Act.

Seller ALLEN-RUSSELL FORD, INC.

By _____ Title _____

DETAILS OF TRANSACTION

(1) **Cash Price** LIST PRICE 94.90 TAX $ 6886.82 (1)
Cash Down Payment $ 300.00
Trade Investment (Net Trade-In) $ 1074.00
(2) **Total Down Payment** $ 1374.00 (2)
(3) **Unpaid Balance of Cash Price** (Difference between Items 1 & 2) $ 5512.82 (3)
(4) **Other Charges**
Optional Insurance (See Opposite) $ 775.74
Official Fees XXXXXX DOC SERVICE $ 37.50
Taxes (Not included in Cash Price) $ n.a.
License, Title & Registration Fees $ 1.00
(License $ n.a. Title $ 1.00
Registration $ n.a.)
EXT. SVC. CONTRACT $ 200.00
STATE INSPECTION $ 3.00
Total Other Charges $ 1017.24 (4)
(5) **Unpaid Balance - Amount Financed** $ 6530.06 (5)
(6) **FINANCE CHARGE** $ 2089.30 (6)
Base Finance Charge $ 2089.30
$ n.a.
(7) **ANNUAL PERCENTAGE RATE** 14.31 (7)
(8) **Total of Payments** (Sum of Items 5 & 6) $ 8619.36 (8)

(9) **Payment Schedule:** Buyer hereby agrees to pay to Seller the Total of Payments (Item 8 above) in 48 monthly instalments of $ 179.57 each and one final instalment of $ n.a. on the like day of each month commencing 7/24/78, or, if no date is specified, one month after the date of this contract.

(10) **Balloon Payment(s)** $ n.a. on n.a. $ n.a. on n.a.
(Insert amount of each payment that is more than twice the amount of any otherwise regularly scheduled equal payment)
A balloon payment may be refinanced only upon such terms and conditions as the then parties to this contract may agree as of its due date.

(11) **Deferred Payment Price** (Sum of Item 1, 4 & 6) $ 9993.36 (11)

(12) **Delinquency Charges:** Buyer hereby agrees to pay a delinquency charge on each instalment in default for more than 10 days in the amount of 5% thereof or $5.00, whichever is less, plus such expenses incurred by Seller in effecting collection hereunder as may be allowed by law.

(13) **Security Interest:** Seller shall have a security interest under the Uniform Commercial Code in the Property (described above) and in the proceeds thereof (including any monies payable under insurance policies covering the Property and unearned insurance premiums) to secure the payment in cash of the Total of Payments and all other amounts due or to become due hereunder.

(14) **Prepayment Rebate:** Buyer may prepay his obligations under this contract in full at any time prior to maturity of the final instalment hereunder, and, if he does so, shall receive a rebate of the unearned portion of the Finance Charge computed under the sum of the digits method after first deducting an acquisition fee of $25.00. No rebate will be made if the amount hereof is less than $1.00.

(15) **Additional Terms and Conditions:** The additional terms and conditions set forth on the reverse side hereof are a part of this contract and are incorporated herein by reference.

NOTICE TO THE BUYER:

Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign. Buyer acknowledges receipt of a true and completely filled in copy of this contract at the time of signing.

Buyer Signs _____
Co-Buyer Signs Betty Anne Reece

NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.

1a

BUYER'S COPY

ADDITIONAL TERMS AND CONDITIONS

16. ASSIGNMENT

The original Seller may assign this contract and his assignee shall acquire all of his interest in this contract and the Property and shall be entitled to all the rights and privileges of Seller hereunder. After Buyer receives notice of any such assignment, Buyer shall make all payments hereunder directly to the holder hereof and the original Seller shall not be the agent of the holder for transmission of payments or otherwise. Buyer shall not transfer or otherwise dispose of any interest in this contract or the Property.

17. USE OF PROPERTY—WARRANTIES

Buyer shall keep the Property free from all encumbrances, and any amount that may be paid by Seller in release or discharge thereof shall be paid by Buyer to Seller forthwith upon demand with interest at the highest lawful contract rate. Buyer shall not use the Property illegally, improperly or for hire (unless stated herein) and shall not remove the Property from the county of his residence without the written permission of Seller. **No representation, promise or warranty, express or implied, has been made with respect to the merchantability, suitability or fitness for purpose of the Property or otherwise unless the same is endorsed hereon in writing or is contained in a separate written instrument signed by the original Seller.**

18. RISK OF LOSS—INSURANCE

The Property shall be at Buyer's risk. Buyer shall obtain and maintain at his own expense for so long as any amount remains unpaid hereunder insurance protecting the interests of Buyer and Seller against loss, damage or destruction of or to the Property in such forms and amounts as Seller may require. The inclusion of a charge for insurance herein shall not relieve Buyer of such obligation but only authorizes Seller to attempt to obtain the requested coverages on Buyer's behalf through an authorized agent; provided, if Seller is unable to obtain the requested coverages for the term indicated for the amount included herein, Seller may (i) obtain such coverages for such term, if any, as the insurance carrier to whom Seller shall apply therefor will provide for such amount, or (ii) credit such amount to the final maturing instalments hereunder in inverse order of maturity or as otherwise required by law.

If Buyer fails to obtain or maintain such insurance, or fails to furnish satisfactory evidence thereof upon request, Seller may, but shall not be required to, and without prejudice to his rights hereunder if he does not, obtain such insurance protecting either the interests of Buyer and Seller or the interest of Seller only. In such event, Buyer agrees to reimburse Seller for the cost thereof forthwith upon demand together with interest thereon at the highest lawful contract rate.

Buyer hereby assigns to Seller any monies payable under such insurance by whomever obtained, including returned or unearned premiums, and Seller hereby is authorized on behalf of both Buyer and Seller to receive or collect same, to endorse checks or drafts in payment thereof, to cancel such insurance or to release or settle any claim with respect thereto. The proceeds from such insurance, by whomever obtained, shall be applied toward replacement of the Property or payment of the indebtedness hereunder in the sole discretion of Seller.

19. DEFAULT

Time is of the essence of this contract. In the event Buyer defaults in any payment, or fails to obtain or maintain the insurance required hereunder, or fails to comply with any other provision hereof, or a proceeding in bankruptcy, receivership or insolvency shall be instituted by or against Buyer or his property, or Seller deems the Property in danger of misuse or confiscation, or Seller otherwise reasonably deems the indebtedness or the Property insecure, Seller shall have the right to declare all amounts due or to become due hereunder (exclusive of unearned finance charges) to be immediately due and payable and Seller shall have all the rights and remedies of a Secured Party under the Uniform Commercial Code, including the right to repossess the Property wherever the same may be found with free right of entry, and to recondition and sell the same at public or private sale. Upon request, Buyer shall deliver the property to Seller at a place designated by Seller. Seller shall have the right to retain all payments made prior to repossession and Buyer shall remain liable for any deficiency to the extent permitted by law. Any personalty in or attached to the Property when repossessed may be held by Seller without liability and Buyer shall be deemed to have waived any claim thereto unless written demand by certified mail is made upon Seller within 24 hours after repossession. Buyer agrees to pay reasonable attorneys' fees (15% if permitted by law) and other expenses incurred by Seller in effecting collection, repossession or resale hereunder. Seller's remedies hereunder are in addition to any given by law and may be enforced successively or concurrently. Waiver by Seller of any default shall not be deemed a waiver of any other default.

20. GENERAL

No transfer, renewal, extension or assignment of this contract or any interest hereunder, and no loss, damage or destruction of or to the Property, shall release Buyer from his obligations hereunder. This contract constitutes the entire agreement between the parties and no modification hereof shall be valid in any event, and Buyer expressly waives the right to rely thereon, unless made in writing signed by Seller. Any provision of this contract prohibited by applicable law shall be ineffective to the extent of such prohibition without invalidating any other provision of this contract. This contract shall be governed by the laws of the state in which the original Seller is located as shown on the face of this contract.

GUARANTY

For Value Received, each of the undersigned guarantors, jointly and severally, guaranties the prompt and unconditional payment, performance and discharge of all Buyer's obligations under the within contract and covenants that in the event of default in any of said obligations thereunder, to pay upon demand the full amount remaining unpaid thereunder together with a reasonable attorney's fee (15% of the amount then due, or if prohibited, the amount permitted by law) if placed with an attorney for collection. The liability of undersigned shall not be affected by any extension, renewal or other change in the time of payment of said contract, or any change in the manner, place or terms of payment thereof, or the release, settlement or compromise of or with any party liable for the payment thereof, or the release or non-perfection of any security thereunder. The holder of the within contract shall not be bound to exhaust its recourse against Buyer or any other person or any security the holder may at any time have before being entitled to payment from the undersigned hereunder. Each of the undersigned guarantors hereby waives notice of the acceptance of this guaranty, and of presentment, demand and protest and notices of non-payment and dishonor, and any other demands and notices required by law.

Guarantor _____ Address _____

Guarantor _____ Address _____

FORD LIFE INSURANCE COMPANY
NOTICE OF PROPOSED GROUP CREDIT LIFE INSURANCE

Notice hereby is given that if a charge for group credit life insurance to be provided by Ford Life Insurance Company, Dearborn, Michigan, under its Group Policy No. 2200 is separately stated as a part of the balance payable under the annexed retail instalment instrument, and if such instrument is assigned or otherwise transferred to Ford Motor Credit Company, the group policyholder, and if the person to be insured is eligible for such insurance as hereinafter provided, life insurance protection under the said Group Policy will be provided upon the life of such person with respect to such instrument. Any natural person is eligible for such insurance if he is primarily or secondarily obligated to make the payments provided in such instrument and has not attained his 66th birthday on or before the effective date of such instrument. The Insured Person will be the person named as such in such instrument if such person is eligible for insurance hereunder. In the event no person is named as the Insured Person, or if the person so named is not eligible for such insurance, then the Insured Person will be: (a) If the Buyer named in such instrument is one or more natural persons, that natural person whose signature as "Buyer" appears first; (b) If the Buyer named therein is a partnership, that natural person, being a partner, whose signature on behalf of the partnership appears first; or (c) If any Buyer named therein is a corporation, that natural person who is personally obligated on the instrument and whose signature as "Buyer" or "Co-Buyer" appears first; provided that in the event there is no natural person obligated under such instrument under the age of 66 as of the effective date thereof, all provisions with respect to such credit life insurance will be void and of no effect. Such insurance will become effective from the date the obligation of the Buyer named in such instrument is incurred and will, in the absence of default in any payment coming due thereunder, remain in force, subject to the terms of the Group Policy, until discharge of all obligations thereunder. Any amount becoming payable at the death of the Insured Person will be applied to reduce or extinguish Buyer's obligation thereunder. The amount of insurance will be the amount owing from time to time under such instrument but not to exceed $10,000 less the amount of existing insurance on the date of such instrument with respect to any other obligation for which the Buyer is insured under the said Group Policy; provided that the amount payable under the said Group Policy will be limited to a credit or refund of the amount included as the premium or cost of such insurance in such instrument in the event that death of the Insured Person results from (a) suicide, while sane or insane, within one year from the effective date of the insurance, or (b) a disease, injury or health condition for which the Insured Person was hospitalized or received medical treatment within the thirty days immediately preceding the effective date of the insurance, if death occurs within the ninety days immediately following such date. If the insurance becomes effective, a certificate of insurance describing the coverage afforded in greater detail will be furnished to the Buyer within thirty days. If the insurance is declined by the insurer or otherwise does not become effective or if a charge for an amount of insurance in excess of the foregoing limit is made, notice thereof will be sent to the Buyer and the appropriate portion of the charge for such insurance together with the finance charge applicable thereto promptly will be credited or refunded to the Buyer. In the event such insurance terminates during the lifetime of the Insured Person, the portion of the insurance charge applicable to the period subsequent to the date of termination will be refunded or credited to the Buyer. No refund or credit of insurance charge will be made if the amount thereof is less than $1.00. The insurance charge refund formula is on file with the state official having supervision of the proposed insurance and a copy thereof is on file with the group policy holder.

FL 13025

THE ABOVE NOTICE APPLIES ONLY IF A CHARGE FOR CREDIT LIFE INSURANCE UNDER FORD LIFE INSURANCE COMPANY'S GROUP POLICY NO. 2200 HAS BEEN STATED IN THE ANNEXED INSTRUMENT. IF A CHARGE FOR OTHER CREDIT LIFE INSURANCE OR OTHER INSURANCE HAS BEEN INCLUDED THEREIN, BUYER WILL BE FURNISHED WITH SUCH APPLICATION, NOTICE, CERTIFICATE OR POLICY WITH RESPECT THERETO AS IS REQUIRED BY LAW.

AGENCY										DEALER
MAJOR				SUB						
0	1	0	1	1	1	0	0	2	3	0

FMC ACCOUNT NUMBER 4047

American Security Insurance Company
ATLANTA, GEORGIA 30302

LPD 14 23

CERTIFICATE OF LIMITED PHYSICAL DAMAGE AUTOMOBILE INSURANCE

DECLARATIONS

BORROWER - NAME AND ADDRESS

Cynthia L Sallett
2905 Springdale Rd S # 2
Atlanta, Ga 30315

CREDITOR - NAME AND ADDRESS

FORD MOTOR CREDIT COMPANY
P.O. BOX 3250
ATLANTA, GEORGIA 30302

Tel. No. 404 / 938-1010

COVERAGE PERIOD		DATE OF NOTICE		DATE PLACED	
FROM	TO	TERM OF INS. COVERAGE	CONTRACT BALANCE		PREMIUM
11-28-77	10-28-80	35 TERM IN MONTHS	$ 5300.40		$ 1002.00

DESCRIPTION OF COLLATERAL		
YEAR	MAKE	IDENTIFICATION NUMBER
77	Mustg	4993

PERILS COVERED	DEDUCTIBLE: (SEE PART C OF REVERSE)
COMPREHENSIVE COLLISION	$100 + 20% OF THE AMOUNT OT LOSS. MAXIMUM DEDUCTIBLE FOR ANY ONE LOSS: $250.

NOTICE TO BORROWER This is limited coverage. Please read below & reverse.

This is to advise you that this LIMITED PHYSICAL DAMAGE certificate of insurance has been placed in accordance with the requirements of your Retail Instalment Contract with the above Creditor and is issued in accordance with the terms set forth in this certificate. This action was necessary because you did not respond to an earlier notice requesting verification as to your insurance coverage. The premium for this coverage indicated above, plus applicable finance charges, has been added to your account and your monthly payments changed accordingly. A new coupon book will be mailed to you.

3a

THIS INSURANCE WILL NEVER PROVIDE AN AMOUNT OF COVERAGE GREATER THAN THE NET AMOUNT YOU OWE ON THIS COLLATERAL. It provides limited physical damage protection only and the Company's liability will not exceed the net unpaid balance owed to the Creditor at the time of loss settlement, and is subject to a deductible. You may cancel this certificate as provided in the cancellation provisions within. If you have other insurance, please request your agent or insurance company to notify Ford Motor Credit Company at the above address.

THE COMPANY HEREBY WAIVES AND RELINQUISHES ANY RIGHT OF SUBROGATION AGAINST THE BORROWER AS TO ANY CLAIM PAID UNDER THIS INSURANCE COVERAGE.

THIS CERTIFICATE DOES NOT PROVIDE BODILY INJURY AND PROPERTY DAMAGE LIABILITY INSURANCE AND DOES NOT COMPLY WITH ANY FINANCIAL RESPONSIBILITY LAW OR ANY STATUTORY REQUIREMENT FOR NO-FAULT COVERAGES.

E. A. Tatar Secretary

J R Rees President

Tony W Cook
AUTHORIZED SIGNATURE

MASTER POLICY-FMC
FORM CLPD-FMC

BORROWER'S CERTIFICATE

CERTIFICATE OF INSURANCE

Insuring Agreement

In consideration of the payment of the premium the Company agrees to provide limited insurance protection to the Borrower, as well as to the insured Creditor, as to the single article of collateral described herein against loss or damage having a Date of Loss within the period of coverage of this Certificate as a result of the perils stated below.

The Borrower's participation in this insurance coverage is specifically limited to the COMPANY'S SETTLEMENT OPTIONS APPLICABLE TO BORROWER and to the applicable DEDUCTIBLES as well as the other terms and conditions of this Certificate.

A. Coverage: This insurance covers direct and accidental loss of or damage to the insured collateral occurring prior to repossession or abandonment from the following perils:

1. COMPREHENSIVE PERILS - Any physical damage or loss caused by a peril other than collision or upset.
2. COLLISION OR UPSET - Any physical damage or loss caused by collison with a vehicle or object, or by upset.

B. Company's Settlement Options Applicable to Borrower: This is limited physical damage coverage and the Company's liability to the Borrower shall not exceed the least of the following:

1. The cost of repair or replacement of the collateral at the Company's option less the amount of the Borower's applicable deductibles as stated below; or
2. The unpaid balance owed to the Creditor by the Borrower under the covered loan at the time of loss settlement (including up to but not more than two past due monthly installments) less unearned finance charges, unearned insurance premiums, late charges, and less the amount of the Borrower's applicable deductibles as stated below. Unearned finance charges shall be computed in accordance with the Rule of 78ths; or
3. The actual cash value of the collateral immediately prior to the peril occurrence, less the amount of the Borrower's applicable deductibles as stated below. Where the collateral is a motor vehicle, actual cash value shall be based upon average retail value according to an accepted standard price publication then in effect.

The Company at its option may pay for the loss in money or may repair or replace the collateral or the damaged part thereof with like kind and quality, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the collateral at the agreed or appraised value, but there shall be no abandonment to the Company.

The Company may settle any claim for loss with either the Creditor or the Borrower, as their interests may appear, provided nevertheless that upon demand by the Creditor upon the Company the amount of said loss shall be paid directly to the Creditor.

C. Deductibles: In the event of loss or damage to the collateral caused by a single peril and qualifying under the coverages and terms hereof, it is understood and agreed that from the amount of any loss benefit payable by the Company, the Borrower shall first pay a Basic Deductible of: One Hundred ($100.00) Dollars plus Twenty (20%) percent of such loss up to a maximum deductible of Two Hundred Fifty ($250.00) Dollars.

Where a claim settlement involves loss of or damage to the collateral caused by more than one peril and qualifying under the coverages and terms hereof, there shall be applied to the largest loss a deductible equal to the Basic Deductible and for each additional loss there shall be applied a deductible of One Hundred ($100.00) Dollars.

D. Conditions Precedent to Liability: The conditions precedent to the attaching of the Company's liability to the Borrower for any loss or damage under this Certificate are:

1. That the Creditor has neither repossessed the collateral nor declared the eligible loan in default; and
2. That the Borrower has not abandoned the collateral to the Creditor; and
3. That the Borrower has accepted responsibility for the amount of his participating deductible as set forth within this Certificate, and paid such amount either toward the repair or replacement of the collateral or toward the Borrower's unpaid balance owed to the Creditor, depending upon the applicable settlement option; and
4. That in the event loss of or damage to the collateral is claimed to have been caused by theft of the entire collateral or its major parts or components such loss shall be evidenced and supported by a timely report by the Borrower to the law enforcement agency having jurisdiction.

E. Borrower's Duty in Event of Loss: In the event of a peril occurrence affecting the collateral insured hereunder, the Borrower shall:

1. Promptly give notice of such occurrence to the Creditor. The Borrower shall protect the collateral whether or not the loss is covered by this Certificate, and further loss due to failure to protect shall not be recoverable hereunder.
2. In the event of theft, promptly give notice to the law enforcement agency having jurisdiction.
3. The Borrower shall file with the Company within a reasonable time after the peril occurrence a statement of loss in such form including such information as the Company may reasonably require and shall, upon the Company's request, exhibit the damaged collateral.
4. The Borrower shall cooperate with the Company and, upon the Company's request, assist in the conduct of legal proceedings and in enforcing any right against any party who may be liable with respect to the loss of or damage to the collateral.

F. Date of Loss: The date of loss for purposes of determining whether loss is within the period of coverage of this Certificate shall be the date of the peril occurrence relating to such loss.

Form CLPD-FMC

G. Subrogation: In the event of any payment under this Certificate, the Company shall be subrogated to all of the Borrower's rights of recovery against any person or party and the Borrower shall execute and deliver instruments and papers and do whatever else is reasonably necessary to secure such rights. The Borrower shall do nothing after loss to prejudice such rights. However, the Company specifically waives all rights of subrogation against the Borrower.

H. Cancellation - Refund of Premium: This Certificate may be cancelled by:

1. The insured Creditor by mailing to the Company and the Borrower written notices stating when not less than thirty (30) days thereafter such cancellation shall be effective; or
2. The Company by mailing to the insured Creditor and the Borrower written notices stating when not less than thirty (30) days thereafter such cancellation shall be effective; or
3. The Borrower by first obtaining the written consent of the insured Creditor and mailing to the Company written notice stating when thereafter such cancellation shall be effective, subject to terms and conditions of Article I below entitled "Other Insurance".

In the event of cancellation during the Certificate term, unearned premium shall be computed in accordance with the Special Cancellation Table made part of the Master Policy.

Special Condition: The payment in full of the obligation assumed under the Eligible Loan, or the sale, trade, transfer, abandonment or repossession of the collateral shall immediately and automatically terminate all coverage under this Certificate, without notice, and any unearned premium shall be computed as stated above.

I. Other Insurance: This Certificate has been issued in the absence of evidence that the Borrower has otherwise complied with the Creditor's requirement to maintain insurance on the collateral described herein. If the Borrower does have or obtains any insurance which complies with the Creditor's requirements, he shall immediately notify the Creditor or the Company and request that this Certificate be terminated. In any event, coverage under this Certificate shall be deemed to have terminated on the effective date of any such acceptable other insurance, and unearned premium shall be computed accordingly.

J. Limitation on Transfer or Extension of Coverage: The coverage provided under the terms and conditions of this Certificate is not transferable to any other collateral and the Certificate may not be renewed or extended beyond either the term of the eligible loan or that of the Security Agreement except at the request of the insured Creditor, and in no event beyond the time when the insured Creditor ceases to have an insurable interest in the collateral insured hereunder.

K. Territory: This Certificate applies only to direct and accidental loss of or damage to collateral sustained during the Certificate period, while the collateral is within the United States of America, its territories or possessions, Canada, or is being transported between ports thereof.

The coverage is extended to apply while an insured vehicle is being used in the Republic of Mexico provided the principal place of residence of the Borrower is within the United States and the insured vehicle is principally garaged and used within the United States. It is understood and agreed that in the event of loss of or damage to the insured vehicle while in Mexican territory, the adjustment of claim for such loss or damage shall be at the nearest point in the United States where such adjustment can be made; and it is further expressly understood and agreed that the cost for towing, transportation or salvage of the insured collateral while within the Mexican territory shall not be recoverable hereunder and is not a contingency insured against.

L. Exclusions: This Certificate does not apply under any of the Coverages to the following:

1. Property of any kind, equipment, parts or accessories other than standard factory equipment with which the covered collateral was originally equipped by the manufacturer unless included within the original purchase price from the manufacturer's dealer;
2. Any special paint except that which may have been included within the original purchase price from the manufacturer's dealer;
3. Any loss due to war, whether or not declared, civil war, insurrection, rebellion or revolution or to any act or condition incident to any of the foregoing;
4. Any damage to the collateral due to wear and tear, freezing, mechanical or electrical breakdown or failure;
5. Any loss due to conversion, embezzlement, or secretion by any person in lawful possession of the collateral under lease agreement, conditional sales contract, mortgage or other encumbrance;
6. Any loss due to radioactive contamination;
7. Any loss due to confiscation by duly constituted governmental or civil authority;
8. Any vehicle or other article of collateral used in any illicit trade or transportation at any time; or
9. Any loss or damage to a vehicle or other article of collateral while used in a race. speed contest or exhibition.

M. Payment for Loss - Action Against Company: Payment for loss may not be required nor shall action lie against the Company until, as a condition precedent thereto, the Borrower shall have fully complied with all the terms of this Certificate, nor until thirty (30) days after proof of loss is filed and the amount of loss is determined as provided in this Certificate.

N. Declarations: This Certificate may not be orally changed or modified in any manner, nor shall any representations, promises or warranties be deemed made unless endorsed hereon in writing and signed by an authorized agent or representative of the Company.

4a

Supreme Court, U.S.
FILED
APR 10 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1072

FORD MOTOR CREDIT COMPANY,

Petitioner,

v.

CATHERINE EDMONDSON,

Respondent.

PETITIONER'S REPLY MEMORANDUM

LEVINE & D'ALESSIO, P.A.
MORTON P. LEVINE
BURGESS W. STOKES
2415 The Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 521-1684
Attorneys for Petitioner

Of Counsel:

SCHIFF HARDIN & WAITE
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000

April 10, 1979

Lo Grafo Gilpat Press — Chicago
Printed in U.S.A.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1072

FORD MOTOR CREDIT COMPANY,

Petitioner,

v.

CATHERINE EDMONDSON,

Respondent.

PETITIONER'S REPLY MEMORANDUM

Respondent has answered this Court's call for a response to the petition for a writ of certiorari by attempting to obscure the serious issues raised by the decision of the United States Court of Appeals for the Fifth Circuit in *Edmondson* v. *Allen-Russell Ford, Inc.*, 577 F.2d 291 (5th Cir. 1978). Petitioner Ford Motor Credit Company ("Ford Credit") submits this reply to address three new matters raised by respondent.

I. Respondent's Statement of Facts Obscures The Issues Before This Court.

In purporting to "supplement" petitioner's statement of the facts in this case, respondent relies upon two documents

taken from outside the record. These documents are atypical and misleading.*

More importantly, petitioner's presentation *dehors* the record attempts to obscure the issue in this case, which has little to do with the amount of the insurance premiums in particular policies. The Fifth Circuit's decision has put in jeopardy millions of existing consumer credit transactions and the smooth functioning of the Nation's credit-based economy, by adopting a new rule which forces disclosure of any arguably "valuable economic right" as a security interest, although the Truth in Lending Act and implementing Regulation Z command disclosure only of those rights which "secure[ ] payment or performance of an obliga-

* Because the documents have apparently been selected to create the misleading impression that Ford Credit's incidental interest in unearned physical damage insurance premiums is in fact an integral and important security interest taken in automobile financing transactions, they deserve a brief comment. One of the documents (Respondent's Appendix 1a-2a) and respondent's brief (at p. 2) refer to credit insurance—which has no relevance whatsoever to the physical damage insurance involved in this case. The assignment of unearned physical damage insurance premiums provides the lender no right to any interest in any other type of insurance that might be involved in the transaction. The other document (Respondent's Appendix 3a-4a) at least deals with the relevant type of insurance, but the transaction which respondent has called to the Court's attention is hardly representative. It involves atypical single interest physical damage insurance for the full term of the contract, and an insured amount substantially greater than the average balance involved in automobile financing transactions in the United States. *See,* Petition for Certiorari, n. 6 at p. 18.

The "single interest" physical damage insurance reflected in respondent's Appendix is not typically written in connection with the credit sale of an automobile, but, if obtained at all, is obtained subsequently by the creditor after the debtor has failed to provide the more usual dual interest insurance. Typically, dual interest physical damage insurance is written for a period of 6 or 12 months, not 35 months as indicated in respondent's Appendix, and dual interest policies do not permit the lender the unilateral right of policy cancellation.

tion." Regulation Z, 12 C.F.R. § 226.2(gg) (1978). In addition, with only the comment that "we need not tarry long over the complexities of Georgia's commercial law" the decision below wholly ignores the Federal Reserve Board's clear and repeated instruction to all who must comply with the Act to look to the commercial law of the states to determine whether there is any "security interest" which must be disclosed.* Respondent's transparent attempt at misdirection must not draw the Court's eye from the importance of the real issues in this case, industry-wide issues which demand this Court's attention.

II. Federal Reserve Board Letter No. 377 is Not Applicable To This Case.

Respondent argues that the Fifth Circuit's holding in *Edmondson* is consistent with interpretations of the Truth in Lending Act by the Federal Reserve Board. But against the substantial authorities cited in the petition for certiorari, respondent can advance only F.R.B. Letter No. 377 (1970). And even that authority is inapposite.

The F.R.B. staff there considered a situation in which borrowers would use the proceeds of a loan to purchase accidental death and dismemberment insurance. The cred-

* The Federal Reserve Board has referred lenders to state substantive law to determine whether each of the following interests constitutes a "security interest" which must be disclosed under the Act: Federal Reserve Board Staff Opinion No. 1263 [1974-77 Special Releases Transfer Binder] CONS. CRED. GUIDE (CCH) ¶ 31,736 (November 23, 1977) (assignment of insurance proceeds and unearned insurance premiums); Federal Reserve Board Staff Opinion No. 829 [1974-77 Special Releases Transfer Binder] CONS. CRED. GUIDE (CCH) ¶ 31,151 (August 22, 1974) (interest in after-acquired property); Federal Reserve Board Letter No. 114 (September 10, 1969) 2 Truth in Lending Manual, E-144 (3d ed. 1973) (agreement not to encumber); and Official Interpretation of Federal Reserve Board, 12 C.F.R. § 226.202 (May 26, 1969) (confession of judgment clauses and cognovit provisions).

itor would take a security interest in unearned premiums paid for such insurance, and these unearned premiums would constitute the collateral on which the creditor would foreclose *in the event of default* in order to obtain repayment of the loan.

But the assignment in the instant case is not geared to *default* at all. Nor does it provide the lender with a source of any significant recovery of the debt in the case of default. The sole purpose of assignment of unearned physical damage insurance premiums in cases like the present one is simply to assure that the financed vehicle—the subject of the true "security interest" in the transaction—remains insured during the life of the loan, and that the insurance premiums can be used by the borrower only for that purpose. This assignment has uniformly been disclosed on the back of millions of installment credit contracts presently in force only because lenders *never* intended or construed such collateral-protection provisions to secure payment of the loans involved.

Moreover, the staff's answer to the particular inquiry involved in Letter No. 377 is hardly surprising. If one asked the staff whether, on the facts of the present case, Ford Credit's interest in the *automobile* could be disclosed as a security interest, one would receive a similar answer. Just as the purchase of insurance was the object of the loan at issue in Letter No. 377, the purchase of an automobile was the object of the loan at issue in the present case.

Unearned physical damage insurance premiums are small to begin with, they decline over the life of the loan, and their availability to the creditor is unrelated to default. No creditor possessed of his senses would, in the context of a secured automobile loan, view this most uncertain and incidental right to unearned insurance premiums as a "security interest" which would support the loan. Here, as in *Teamsters* v. *Daniel*, 58 L.Ed.2d 808 (1979), the Court must give precise meaning to a statutory term which some would make all-embracing; here, as in *Daniel*, the Court should look to "the substance—the economic realities of the transaction" as they are commonly understood. 58 L.Ed.2d, at 816.

III. The Economic and Stare Decisis Impacts of the Decision Below Will Devastate the Credit Industry.

Respondent suggests that this case lacks importance because petitioner has changed its standard form contract in light of the Fifth Circuit's decision in *Edmondson*. Whether respondent's assertion is true or not (and the record is silent on this point also), it is wholly irrelevant for two reasons.

First, the *Edmondson* decision, if allowed to stand, will have a staggering effect upon contracts executed *before* the decision, as the petition argued and the brief of *amici curiae* The National Consumer Finance Association and General Motors Acceptance Corporation emphasized. *See*, Petition for Writ of Certiorari, at 18-20; Brief of *Amici Curiae*, at 12-15.

Second, even if its direct economic impact were not enormous, the *Edmondson* decision creates a more fundamental problem which will have a continuing and unsettling effect upon the Nation's credit-based economy if this Court declines review. The Fifth Circuit has, for all practical purposes, commanded that any "valuable economic right" available to the seller in a credit sale transaction be disclosed as a security interest. For the reasons advanced in the petition, this holding makes compliance with the Truth in Lending Act a guessing game. It is to this most fundamental issue that petitioner urges this Court to speak, in a case whose direct economic impact is enormous.

The definition of "security interest" in Regulation Z describes, by example, the types of security interests required

to be disclosed. The examples given are all typical, well-recognized types of security interest. They make it clear that the Regulation focuses on security interests whose purpose and function is to secure the debt—*not* on interests in property whose purpose is wholly incidental to repayment of the loan at issue. Proper respect for the Board's Regulation, read together with the principle of *ejusdem generis*, should restrict the Act's disclosure requirement to typical security interests and halt it well short of the sort of incidental interest at issue in this case.

Indeed, the penal nature of the damages that may be imposed under the Act requires this conclusion. Under the Act, a civil penalty is imposed upon the creditor for an amount equal to double the amount of the finance charge (up to a $1,000 maximum) for any violation of the Act, no matter how technical and whether intentional or not. 15 U.S.C.A. § 1640(a). While petitioner recognizes that the Act has been viewed as remedial in nature, the statute also imposes what are clearly penalties, as Congress has recognized in the body of the Act itself.* A court should not impose a penalty for conduct not clearly proscribed in an act under the guise of liberally construing such legislation, especially where, as here, the purpose of the Act is not furthered by imposing the penalty.

Fundamental fairness and equity dictate that lenders be given more guidance as to what the law requires than the Fifth Circuit's new test gives before being held under a strict liability standard for even the most minor technical disclosure deviations and required to pay the Act's civil penalties. "[W]hen the Government makes [such] a new regulation excursion into the field of business, the act of the lawmaking body which evidences such departure must be so plain as to notify the ordinary citizen of the move." *Auers* v. *Phillips Petroleum Co.*, 25 F.Supp. 458, 459 (N.D. Tex. 1938)

For these reasons, and the reasons advanced in the petition for a writ of certiorari, petitioner urges the Court to grant a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit in this case.

Respectfully submitted,

LEVINE & D'ALESSIO, P.A.
MORTON P. LEVINE
BURGESS W. STONE
2415 The Equitable Building
100 Peachtree Street
Atlanta, Georgia 30303
(404) 521-1624
Attorneys for Petitioner

Of Counsel:

SCHIFF HARDIN & WAITE
7200 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
(312) 876-1000

April 10, 1979

* Section 113 of the Act expressly recognizes that the civil recovery provided for under Section 130(a) of the Act is a "penalty." The language of Section 113 is as follows:

> "§ 113. *Penalties inapplicable to governmental agencies.*
>
> *No civil or criminal penalty provided under this title for any violation* thereof may be imposed upon the United States or any agency thereof, or upon any State or political subdivision thereof, or any agency of any State or political subdivision." (emphasis supplied)

Congressional recognition of the penal nature of one of its own enactments is persuasive authority in guiding the judiciary's construction of that statute. *Helwig* v. *United States*, 188 U.S. 605, 615, 23 S.Ct. 427, 430 (1902).

MOTION FILED
FEB 5 1979

In the
Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-1072

FORD MOTOR CREDIT COMPANY,
Petitioner,

versus

CATHERINE T. EDMONDSON,
Respondent.

BRIEF OF AMICI CURIAE THE NATIONAL CONSUMER FINANCE ASSOCIATION AND GENERAL MOTORS ACCEPTANCE CORPORATION IN SUPPORT OF PETITIONER

DAVID L. CAMPBELL
4285 One Shell Square
New Orleans, Louisiana 70139
Telephone: (504) 523-7070
Attorney for Amici Curiae
National Consumer Finance Association an
General Motors Acceptance Corporation

OF COUNSEL:

OTIS M. SMITH, Attorney
General Counsel
General Motors Acceptance Corporation
3044 West Grand Boulevard
Detroit, Michigan 48202
Telephone: (313) 556-6000

RENE RAMIREZ, Attorney
General Motors Acceptance Corporation
767 Fifth Avenue
New York, New York 10022
Telephone: (212) 486-5072

ROBERT B. EVANS, Attorney
National Consumer Finance Corporation
1000 16th Street, N.W.
Washington, D.C. 20036
Telephone: (202) 638-1340

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 78 - 1072

FORD MOTOR CREDIT COMPANY,
Petitioner

versus

CATHERINE T. EDMONDSON,
Respondent

MOTION FOR LEAVE TO FILE BRIEF
AS AMICI CURIAE

NOW INTO COURT, through undersigned counsel, come General Motors Acceptance Corporation and the National Consumer Finance Association, and move this Court for an order allowing them to file the attached brief as *amici curiae* in support of the position of petitioner Ford Motor Credit Company.

Movers show that Mr. Burgess W. Stone, counsel for petitioner, has consented to the filing of this brief, which consent is attested to in his letter of January 15, 1979, which is attached to the brief;

Movers further show that Mr. Jay Loeb, counsel for respondent, Catherine Edmondson, has consented to the filing of this brief on behalf of General Motors Acceptance Corporation, which consent is attested to in his letter of January 24, 1979, which is attached to the brief;

Finally, movers show that, after being informed of the

interest of the National Consumer Finance Association in the disposition of this case, counsel for respondent refused his consent to the filing of the attached brief as amicus curiae by the National Consumer Finance Association, but confirmed his consent to said filing on behalf of amicus GMAC.

For the reasons set forth in the "Statement of Interest of Amici Curiae," (pp. 1 through 3 of the attached brief), movers pray that this Court issue an order allowing the filing of the attached brief as amici curiae on behalf of General Motors Acceptance Corporation and the National Consumer Finance Association.

Respectfully submitted,

OTIS M. SMITH,
General Counsel
General Motors Acceptance Corporation
3044 West Grand Boulevard
Detroit, Michigan 48202

DAVID L. CAMPBELL
4285 One Shell Square
New Orleans, Louisiana 70139

RENE RAMIREZ
Attorney
General Motors Acceptance Corporation
767 Fifth Avenue
New York, New York 10022

ROBERT B. EVANS
Attorney
National Consumer Finance Corporation
1000 16th Street, N.W.
Washington, D. C. 20036

TOPICAL INDEX

	PAGE
Statement of Interest of Amici Curiae	1
Reasons for Granting the Writ	3
I. The Current Status of Truth In Lending Law clearly calls for this Court to give Guidance to Creditors and Consumers in an Important Issue concerning Disclosure Requirements	3
II. Any Ruling against Ford Motor Credit should be applied prospectively only	10
Conclusion	15
Certificate of Service	17
Appendix I	A-1
Appendix II	A-2

TABLE OF AUTHORITIES

PAGE

CASES:

Chevron Oil Co. v. Huson, 404 U.S. 97 (1971) 106-107 10

James v. Ford Motor Credit Co., (No. 78-F-647, D. Col. Aug. 21, 1978) 5

Kessler v. Associates Financial Services Co., 573 F.2d 577 (9th Cir. 1977) 12

McDaniel v. Fulton National Bank, 571 F.2d 948 (5th Cir.) (en banc), reh. denied 576 F.2d 1156 (5th Cir. 1978) 11

Mourning v. Family Publications Service, 411 U.S. 356 (1973) 14

Rounds v. Community National Bank in Mammouth, 454 F.Supp. 883 (S.D. Ill. 1978) 5

STATUTES AND RULES:

Consumer Credit Protection Act, 15 U.S.C. §1601, et seq. 6

Truth in Lending Regulations, Regulation Z, 12 C.F.R. § 226.1, et seq. (1978) 6

TABLE OF AUTHORITIES (Continued)

PAGE

MISCELLANEOUS:

1. Annual Report to Congress on Truth in Lending for the year 1977, reprinted in Issue No. 484, Part II, CCH Consumer Credit Guide pp. 1, 9 and 11 7

2. Federal Reserve Board Staff Opinion No. 1263 [1974-77 Special Releases Transfer Binder] Consumer Credit Guide CCH ¶31,736 (November 23, 1977) 12

3. Hearings on S.3008 before the Subcommittee on Consumer Affairs of the Senate Committee on Banking, Housing and Urban Affairs, 94th Congress, Second Session: 364-365 (1976). 4

4. Senate Bill 2802, 95th Congress, Second Session (1978) S. 2802 9

5. Senate Report No. 95-720, 95th Congress, Second Session (1978), reprinted in Special Report Issue No. 496, CCH Consumer Credit Guide pp. 1-6. .....

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

NO. 78-1072

FORD MOTOR CREDIT COMPANY,
Petitioner

versus

CATHERINE T. EDMONDSON,
Respondent

BRIEF OF AMICI CURIAE THE NATIONAL CONSUMER FINANCE ASSOCIATION AND GENERAL MOTORS ACCEPTANCE CORPORATION IN SUPPORT OF PETITIONER

STATEMENT OF INTEREST OF AMICI CURIAE

This case involves the interpretation of only a single issue of federal truth in lending law, and the dollar amount at stake is negligible. It would be, however, a serious mistake to overlook the enormous volume of credit transactions which will be adversely affected by this decision if the interpretation created by the Fifth Circuit is allowed to stand. At the present time, for example, total consumer installment credit outstanding in the United States is approximately 210-220 billion dollars and the rate of increase is climbing steadily each month. It is estimated that there are presently over 50 million individual consumer credit obligations in force in the

United States. A large portion of these transactions involve extensions of retail automotive credit or other closed-end security credit transactions which contain provisions regarding property damage insurance premiums and proceeds that are similar or identical to the provision at issue here.

The National Consumer Finance Association is the consumer finance industry's only trade association. Founded in 1916, the association represents 761 finance and industrial banking companies, with 15,742 offices across the United States. Members of the National Consumer Finance Association presently have over 50 billion dollars in outstanding consumer credit.

General Motors Acceptance Corporation ("GMAC") is a credit finance institution which is engaged in the business of purchasing retail installment contracts at a discount from automobile dealers. GMAC conducts its operations from 398 branch offices in the United States and Canada, from which it provides financing to over 18,400 General Motors dealers, servicing over 4,000,000 retail accounts. At the present time, GMAC has over 14 billion dollars in outstanding credit. In 1977, GMAC purchased over 2 million consumer retail installment contracts, and the forecast figures for 1978 approximate 2,110,000. There are presently 110 lawsuits pending against GMAC under the Truth in Lending Act, 61 of them in the Fifth Circuit's area of jurisdiction. Many of these suits have been filed in the wake of the Fifth Circuit's decision in this case, and allege that the Truth in Lending disclosure statements are inadequate because they, too, fail to disclose the borrower's assignment of returned or unearned physical damage insurance premiums, although such "disclosure" is contained in the installment contracts. In

the Eastern District of Louisiana, 17 of the 20 Truth in Lending suits now pending against GMAC allege inadequate disclosure of the "security interest" in unearned insurance premiums, relying on the appellate court's decision in this case.

REASONS FOR GRANTING THE WRIT

I. THE CURRENT STATUS OF TRUTH IN LENDING LAW CLEARLY CALLS FOR THIS COURT TO GIVE GUIDANCE TO CREDITORS AND CONSUMERS IN AN IMPORTANT ISSUE CONCERNING DISCLOSURE REQUIREMENTS.

Although the Truth in Lending Act was originally intended as a simple statute to require uniform statements of credit costs in order to facilitate the informed use of credit, the Act has developed into an intricate, burdensome, and highly technical statute which has generated an incredible variety of conflicting judicial and administrative decisions and interpretations. The issuance of Regulation Z, which was promulgated by the Federal Reserve Board under its authority to interpret and (with the Federal Trade Commission) enforce the Act, has proven equally susceptible to divergent and contradictory interpretations. In order to clarify the application of the Act and Regulation Z to specific factual situations, the Federal Reserve Board and its Staff have issued numerous formal and informal interpretations and opinions to aid sellers and lenders in their efforts to determine and comply with their disclosure responsibilities. Members of the consumer credit industry, attempting in good faith to comply, and relying upon Board interpretations and the provisions of the Act and Regulation Z, have devised printed disclosure forms which have been utilized in millions of consumer credit transactions each year.

Despite these good faith efforts to discern and comply with the requirements of the Act, there have been several instances in which an unprecedented and unforeseen theory of interpretation of the Act has been judicially adopted and retroactively applied. With each such decision, even though in conflict with others, all credit transactions consummated within the year prior to the decision suddenly become vulnerable to attack. A profile of truth in lending suits filed nationwide indicates that more suits are initiated to take advantage of such unsettling decisions or as purely defensive techniques than are instituted due to actual consumer concern with the disclosure of credit terms or costs.[1]

The credit industry has spent literally millions of dollars

1. See, for example, testimony of various witnesses in the Hearing before the Subcommittee on Consumer Affairs, Committee on Banking, Housing and Urban Affairs, United States Senate, 94th Congress, Second Session on S.3008 "Qui Tam and Federal Reserve Board Procedures", esp. Phillip C. Jackson, member, Board of Governors, Federal Reserve Board, wherein at p. 364-365, Governor Jackson states:

• • • •

> . . .when I became aware of the amount of litigation that has taken place over purely technical issues I personally share some of your judgments and, therefore, our staff is working not only today but with a relatively short deadline toward coming up with some specific recommendations.
>
> • • • •
>
> Senator Proxmire. Can you shed any light on reasons for the great increase in volume of the TIL case law?
>
> Mr. Jackson. I don't have a substantive study, but it's my personal opinion that, unfortunately, the purely technical aspects of the Truth-in-Lending statute are often used as a defense against actions which are otherwise based. In other words, many cases really involve something else, but the Truth-in-Lending techniques are used as the defense against an action for another purpose. That's a personal opinion, but maybe Mr. Hawke has a different one.

and untold hours of personnel time in devising, printing, distributing, revising, reprinting and redistributing disclosure forms in a good faith attempt to comply with the ever-changing and ofter contradictory judicial pronouncements on truth in lending requirements. Despite such efforts and the hypertechnical character of most of the disclosures which, by such retroactive decisions, have been held to violate the Truth in Lending Act, the credit industry has been severely penalized in judgments, settlements, and legal fees. Given the Act's automatic imposition of plaintiffs' attorneys fees, it is heardly surprising that, given one adverse, strained judicial interpretation, scores of identical claims are immediately instituted.

The situation which has arisen as a result of the Fifth Circuit's decision in this case is a classic illustration of the quandary in which the credit industry has repeatedly been placed by such judicial expansion of disclosure requirements. In this case, the Fifth Circuit has decided that a creditor must disclose as a "security interest" any contractual assignment to the creditor of returned or unearned premiums which may be due upon the cancellation or other termination of physical damage insurance on debt collateral. This holding is directly contrary to the concept of security interests in the Truth in Lending Act itself, the interpretation of the term "security interest" by the Federal Reserve Board, and decisions in various federal district courts.[2] The decision has plunged the already contorted status of truth in lending law and the cred-

2. See *Rounds v. Community Nat. Bank in Mamouth, et al.*, 454 F. Supp 883 (S.D. Ill. 1978), affirmed *Basham v. Finance America Corp.*, 583 F.2d 918 (7th Cir. 1978) and *James v. Ford Motor Credit Co.*, (No. 78-F-647, D.Col. Aug. 21, 1978), discussed in petitioner's brief at pp. 13-14.

it industry into chaos. In a highly technical area such as this, justice requires that creditors be permitted to rely upon the clear requirements of the Act and Regulation Z as written and as interpreted by the Federal Reserve Board. The case at bar presents an opportunity for this Court to affirm this basic principle on an issue which seriously affects the entire credit industry.

Under the guidelines set forth in Rule 19 of the Supreme Court Rules, one of the most compelling reasons for which this Court should grant review on a petition of certiorari is that the Fifth Circuit Court of Appeals "has decided an important question of federal law which has not been, but should be, settled by this Court." The appellate decision in this case presents a new and radical departure from established judicial and administrative interpretations defining security interests under the Truth in Lending Act ("the Act") (15 U.S.C. § 1601 et seq.) and Regulation Z of the Federal Reserve Board, (12 C.F.R. § 226 et seq.). The decision overlooks authoritative directives of the Board in failing to examine state law to determine what constitutes a security interest. The Court's decision, in so doing, conflicts with the criteria established by other federal courts and the Board to determine the existence and extent of a security interest. The Court of Appeals simply legislated a disclosure requirement which does not exist, either in the Act itself or in Regulation Z. The effect of this unwarranted assumption of Congressional authority is to create such disorder in the courts and in the credit industry as to completely frustrate the purpose for which the Act was enacted.

There has been almost universal recognition, on the parts of courts, the Federal Reserve Board, the credit industry, and

consumer protection agencies, that the present disclosure requirements are as baffling to the credit industry as they are to the consumer. In response to such widespread concern over the confusion engendered by the complexity of truth in lending law and strained judicial interpretations, the U. S. Senate recently passed Senate Bill No. 2802, known as the Truth in Lending Simplification and Reform Act. This composite bill received the unanimous endorsement of the members of the Senate Banking Committee, most of whom were proponents of the original Truth in Lending Act, and several of whom had themselves introduced truth in lending simplication bills.[3]

In its Annual Report to Congress on Truth in Lending for the year 1977,[4] the Board recognized "the need for simplification of the requirements of both the Truth in Lending Act and Regulation Z." The board declared that, because many of the problems and complexities arise from the statute itself and cannot be solved through regulatory change, (p. 1) the Board had submitted a proposed simplication bill to the Senate Banking Committee. The Board report noted that "...most violations that have been discovered are technical in nature and result from misunderstanding, inadvertence, or clerical error." (p. 9). The report also mentioned that the Consumer Advisory Council had "expressed special concern about the complexity of the current disclosures and the need

---

3. See S.1212, introduced by Senator Proxmire; S.1501, introduced by Senators Garn, Schmitt and Tower; S.1653, introduced by Senator Riegle; and S.1846, introduced by Senator Proxmire on request of the Federal Reserve Board.

4. See Annual Report to Congress on Truth-in-Lending for the year 1977, reprinted in issue No. 484, Part II, CCH Consumer Credit Guide, 1, 9, 11.

to simplify the requirements." (p. 11) In his Report to the Senate recommending passage of the simplification bill, Senator Riegle of the Committee on Banking, Housing & Urban Affairs stated:

> ". . ., there is a growing belief among consumers and creditors alike that the act could be substantially improved. There is considerable evidence, for example, that disclosure forms given consumers are too lengthy and difficult to understand. Creditors on the other hand, have encountered increasing difficulty in keeping current with a steady stream of administrative interpretations and amendments, as well as highly technical judicial decisions. There is also evidence that many creditors have sincerely tried to comply with the act but, due to its increasing complexity and frequent changes, have nonetheless found themselves in violation and subject to litigation.
>
> (p. 2)

Senator Proxmire explained that the new bill

> ". . . would narrow a creditor's civil liability for statutory penalties to only those disclosures which are of central importance in understanding a credit transaction's cost or terms. It is anticipated that this will eliminate litigation which is based on violations of a purely technical nature.

> In a "closed end" transaction, such as an auto loan, the creditor's civil liability for statutory penalties would be limited to disclosure of the amount financed, the finance charge, the total of payments, the annual percentage rate, the number, amount, and due dates of payments, any security interest taken, and, where applicable, the consumer's right of rescission.
>
> (p.6)

The Truth in Lending Simplification bill passed by the Senate will require the Board to promulgate model forms and clauses for common transactions. The use of these forms, while not mandatory, would guarantee compliance of the Act. The model disclosure statement, prepared by the Board staff to illustrate the disclosures required under the new Senate bill,[5] describes the security interest as follows:

> "Your _____ is pledged as collateral to secure payment of this credit in addition to the property purchased as part of this transaction."

There is no reference, anywhere on the model disclosure statement, to the disposition of either proceeds or unearned premiums for physical damage or other insurance. Nor is there any suggestion that assignment of such proceeds or premiums should be disclosed as part of the creditor's security interest. It is also interesting to note that the disclosure statement attached to and referred to in Senator Riegle's report as "a common truth in lending disclosure statement

---

5. See Appendix p. A-1. This model disclosure statement is included in Senator Riegle's Report to the Senate on S.2802, "A-1, Exhibit B."

for credit sales in use today"[6] also contains no reference, in the security interest disclosure, to a creditor's interest in assigned proceeds or unearned premiums of property insurance. The reason for this is obvious: Neither the present Truth in Lending Act, Regulation Z or the pending Simplification Act (reintroduced in the present Senate as S.108) requires or intends to require that such assignments be considered security interests under truth in lending.

The Court of Appeals has clearly exceeded its authority in requiring disclosure of assignments of unearned insurance premiums as "security interests". [Such assignments are, of course, disclosed to the purchaser in the installment contract. The question is whether disclosure must be repeated in the disclosure statement] In so doing, it has misapprehended both the intent and substance of the Truth in Lending Act, with devastating implications for the credit industry.

II. ANY RULING AGAINST FORD MOTOR CREDIT COMPANY SHOULD BE APPLIED PROSPECTIVELY ONLY.

A. A Court Will Apply Its Ruling Prospectively Where Retroactive Application Would Be Inequitable.

In appropriate circumstances, judicial decisions are given prospective effect only. The guidelines for determining when a ruling should be given prospective application were set forth by this Court in *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-07 (1971):

6. Appendix p. A-2. This disclosure statement was included in Senator Riegle's report to the Senate on S.1802, "A-2, Exhibit A."

> "First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied . . . or by deciding an issue of first impression whose resolution was not clearly foreshadowed . . . . Second, it has been stressed that 'we must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation.' . . . Finally, we have weighed the inequity imposed by retroactive application, for '[w]here a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the "injustice or hardship" by a holding of nonretroactivity.' "

The truth-in-lending field is an especially appropriate area for prospective application of new judicial rulings. With only vague statutory and regulatory guidelines in certain areas, creditors are forced to rely upon the pronouncements of the Board and whatever judicial guidance there may be on the issue. Creditors rely upon this valuable guidance in choosing documents and should not be required to anticipate a court's subsequent departure therefrom. Also, retroactive application would not further the Act's purpose to promote "meaningful disclosure." Retroactive application of unanticipated rulings would only serve to penalize unsuspecting creditors – it would not result in more "meaningful disclosure" to previous consumers, since conforming disclosure statements could, of course, only be given in future transactions.[7]

7. The injustice of such a retroactive application was persuasive to the Fifth Circuit in *McDaniel v. Fulton Nat'l Bank*, 571 F.2d 948 (5th Cir.)
(Footnote 7 - continued on next page)

B. The decision of the Court of Appeals, if allowed to stand, would apply retroactively to all credit transactions executed within the past year. Such a decision would be grossly inequitable.

If this Court should decide to affirm the holding of the Court of Appeal, the ruling should be given prospective application.

The Fifth Circuit's ruling in this case is a radical and unprecedented departure from prior judicial decisions and from the explicit interpretations of the Federal Reserve Board, which looked to state law to determine the nature and scope of a security interest. FRB Staff Opinion No. 1263,[8] issued prior to the lower court's decision in this case, addressed this issue directly:

"Your first several questions relate to the treatment of insurance for disclosure purposes in various situations, . . . [where] . . . the security agreement . . . provides that insurance proceeds shall be

---

(Footnote 7 - continued from previous page)

(en banc), reh. denied, 576 F.2d 1156 (5th Cir. 1978). In *McDaniel,* the Court held that, except as to the litigants in the case, its ruling on the acceleration clause issue was to be applied prospectively only, commencing 90 days after the date of the decision. Although in *Kessler v. Associates Financial Services Co.,* 573 F.2d 577 (9th Cir. 1977), this Court held that it was improper for a *district court* to apply its decision prospectively, the Court specifically recognized that such application is a proper function of an appellate court.

8. Federal Reserve Board Staff Opinion No. 1263] 1974-1077 Special Releases Transfer Binder] Cons. Cred. Guide (CCH) ¶31,736 (November 23, 1977).

payable to the creditor, and gives the creditor an interest in all returned and unearned premiums. You ask what sort of identification of the type of security interests would comply with § 226.8(b)(5) in the situations described above.

What constitutes adequate identification of the type of security interest acquired by the creditor depends on how relevant state law would describe the security interest. Note that a more fundamental matter in these circumstances may be to determine whether a security interest exists at all and, if so, to identify the property subject to such interest. Section 226.2(gg) defines 'security interest' as 'any interest in property which secures payment or performance of an obligation'. Thus, if the creditor does not acquire any interest in property (including real property, intangible or tangible personal property), ***or if any such interest does not secure payment of the debt, no security interest exists.*** For example, the contractual right to proceeds from an insurance policy may not amount to an interest in property. On the other hand, assignment of returned and unearned premiums may transfer to the creditor such an interest. However, Staff believes ***these questions would be better addressed as a matter of state law."*** [Emphasis supplied].

The Fifth Circuit's decision, ignoring the express analysis of the Board on this issue, noted, "Fortunately we need not tarry long over the complexities of Georgia's commercial law...." (Opinion at 5757)

This Court has itself recognized the weight to be accorded the opinions and interpreations of the Board. (See *Mourning v. Family Publications Service*, 411 U.S. 356 (1973). Section 130(f) of the Act was amended to specifically allow creditors to rely on interpretations of the Board:

> (f) *No provision* of this section or section 112 *imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board* or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, *notwithstanding that after such act or omission has occured, such* rule, regulation, *interpretation*, or approval *is* amended, rescinded, or *determined by judicial or other authority to be invalid for any reason.* (Emphasis supplied)

In the millions of transactions in which petitioner and other members of the consumer credit industry have based their security interest disclosures on the definitions of security interests contained in the U.C.C. or in the laws of the various states, these lenders were acting in good faith in conformity with an interpretation of the Board.

To impose liability retroactively on petitioner or on any such good faith creditor would be a blatant disregard of the provisions of the Act itself.

C. Retroactive Application Would Not Further the Purposes of the Act and Would Penalize Ford Credit and Other Creditors Notwithstanding Good Faith Efforts to Comply With the Act and Regulation Z.

The effect that retroactive application of any adverse decision in this case would have upon the credit industry is truly staggering. Each of an estimated 50 million installment contracts could give rise to individual penalties of $100 to $1,000, and the class action recoveries against each creditor could be as high as $500,000 or 1% of the creditor's net worth.

This injustice becomes even more obvious when it is recognized that retroactive application would in no way further the purposes of the Act. Although prospective application of the statutory penalties will promote compliance with the Act by penalizing creditors who do not amend their forms to comply with the Court's ruling, retroactive application of the decision cannot possibly deter violations of the Act, and will only serve to foster litigation against creditors who have in good faith attempted to comply with all known statutory and regulatory requirements.

CONCLUSION

For the reasons stated herein and in the original brief of petitioner, Ford Motor Credit Company, it is respectfully submitted that the disclosure statement provided by Ford

Ford Motor Credit in this case complied with the requirements of the Act and Regulation Z and that no liability should be imposed upon Ford. We urge this Court to issue a writ of certiorari to review the decision in this case and to reverse the decision of the appellate court. At the very least and alternatively, we urge this Court to grant a writ of certiorari and to order that the judgment of the appellate court in this case be applied prospectively only.

Respectfully submitted,

DAVID L. CAMPBELL
4285 One Shell Square
New Orleans, Louisiana 70139
Telephone: (504) 523-7070
Attorney for Amici Curiae
National Consumer Finance
Association and General
Motors Acceptance Corporation

OF COUNSEL:

OTIS M. SMITH,
General Counsel
General Motors Acceptance
Corporation
3044 West Grand Boulevard
Detroit, Michigan 48202
Telephone: (313) 556-6000

RENE RAMIREZ, Attorney
General Motors Acceptance
Corporation
767 Fifth Avenue
New York, New York 10022
Telephone: (212) 486-5072

ROBERT B. EVANS, Attorney
NATIONAL CONSUMER FINANCE CORPORATION
1000 16th Street, N.W.
Washington, D.C. 20036
(202) 638-1340

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief of Amici Curiae have been served on Jay Loeb, 30 Healey Boulevard, P.O. Box 2872, Atlanta, Georgia 30301; Burgess W. Stone, 2415 The Equitable Building, 100 Peachtree Street, Atlanta, Georgia 30303, this 2nd day of February, 1979.

DAVID L. CAMPBELL

A-1

EXHIBIT B

ABC Sales Company
One Illinois St., Washington, D.C. 20001

ANNUAL PERCENTAGE RATE (the cost of your credit expressed as a yearly rate) ..... _____%

FINANCE CHARGE (the dollar amount the credit will cost you) ..... $_____
It does not include a $_____ fee for filing a security interest.

AMOUNT FINANCED (the amount of credit you will receive) ..... $_____

TOTAL OF PAYMENTS (the amount you will pay when you make all the payments) ..... $_____

The total of payments will be paid in _____ monthly instalments of $_____ which are due on the _____ day of each month. The first payment is due on _____ and the last payment on _____.

TOTAL SALE PRICE (the total cost of your purchase on credit, including your down payment of $_____) $_____

CREDIT LIFE AND DISABILITY INSURANCE: Credit life and disability insurance is not required to obtain this credit. If you take the insurance, the cost disclosed below will be included in the amount financed.

	Check if desired	Cost
Credit life (for term of credit)	_____	$_____
Credit disability (for term of credit)	_____	$_____

I desire the insurance checked above. _____ _____
Signature Date

PROPERTY INSURANCE: Property insurance as indicated below is required. You may get this insurance from any company you wish. If bought from us, the costs are as follows:

_____ $_____
_____ $_____

LATE PAYMENTS: If you delay any payment by more than ___ days after the due date, you will be charged $_____

SECURITY INTEREST. Your _____ is pledged as collateral to secure payment of this credit in addition to the property purchased as part of this transaction.

PREPAYMENT: If you refinance or prepay in full the amount you owe, you may be entitled to get back a portion of the finance charge.

YOU SHOULD READ YOUR CONTRACT FOR OTHER IMPORTANT INFORMATION INCLUDING OUR RIGHT TO DECLARE THE FULL BALANCE DUE IN THE EVENT OF NONPAYMENT OR OTHER DEFAULT, AND PREPAYMENT REBATES AND PENALTIES.

A-2

EXHIBIT A

Federal Truth in Lending Instalment Credit Disclosure Statement

CUSTOMERS (Names and Addresses):

CREDITORS (Names and Addresses)

Transaction Date ____ No. ____

This disclosure relates to a:

☐ Credit Sale ☐ Loan ☐ ____

☐ New Transaction ☐ Add-On ☐ Refinancing

DISCLOSURES FOR CREDIT SALES ONLY:

1. Cash Price ..... $ ____
2. Less: Cash Downpayment ..... $ ____
3. Trade-in ..... $ ____
4. Total Downpayment (2+3) ..... $ ____
5. Unpaid Balance of Cash Price ..... $ ____
6. Unpaid Balance ..... $ ____
   (Sum of Items 5+8+9+10+11+12)
7. Deferred Payment Price ..... $ ____
   (Sum of Items 1+8+9+10+11+12+17)

NOTE: Appropriate portions of remainder of statement must be filled in for credit sales.

DISCLOSURES FOR ALL TRANSACTIONS:

8. Credit Life Insurance Charge ..... $ ____
9. Disability Insurance Charge ..... $ ____
10. Property Insurance Charge ..... $ ____
11. Recording Fee(s) ..... $ ____
12. Other Charges ____ $ ____
    ____ $ ____
    ____ $ ____
13. Amount Financed ..... $ ____
14. Prepaid Finance Charge ..... $ ____
15. Required Deposit Balance ..... $ ____
16. Total Prepaid Finance Charge and Required Deposit Balance (14+15) ..... $ ____
17. FINANCE CHARGE ..... $ ____
18. Total of Payments ..... $ ____
19. ANNUAL PERCENTAGE RATE ..... ____ %

ADDITIONAL DISCLOSURES REQUIRED IN ALL TRANSACTIONS

This transaction is payable in ____ consecutive monthly instalments. The due date of the first payment is ____ Other payments are due the ____ day of each month. The final payment is due on or before ____ Amount of the first payment $____ Others $____

The amount of the final payment is $____ and ☐ IS ☐ IS NOT a BALLOON PAYMENT. If the final payment is a balloon payment and is not paid when due, it may be refinanced as follows:

DELAYED FINANCE CHARGE: Unless another date is specified in the space immediately following, the finance charge is imposed as of the date of the transaction. Delayed date ____

REBATE FOR PREPAYMENT IN FULL: If this transaction is prepaid in full by cash, an add-on purchase, new loan, refinancing or otherwise before the final instalment date, the customer shall receive a rebate of the finance charge computed as follows (e.g., Rule of 78's): ____

DEFAULT CHARGE(S): The amount, or method of computing the amount, of any default, delinquency or similar charges payable in the event of late payments is as follows: ____

PROPERTY INSURANCE, if written in connection with this transaction, extends to ____
The cost is shown in Item 10 and customer is hereby advised of his right to obtain this insurance from any other person or source.

CREDIT LIFE AND DISABILITY INSURANCE at an extra charge is not required in order for credit to be extended. If provided by the creditor, the charge for credit life insurance is shown in Item 8 and the charge for disability insurance is shown in Item 9.

I desire Credit Life and Disability Insurance.	I desire Credit Life Insurance only.	I DO NOT want Credit Life or Disability Insurance.
(Date) (Signature)	(Date) (Signature)	(Date) (Signature)

SECURITY AGREEMENT: ☐ This transaction is unsecured. ☐ This transaction is secured by (specify type of security interest, such as purchase money security agreement, chattel mortgage, conditional sale, etc.): ____ of even date, covering (give description, including make and serial number for motor vehicles) ____

☐ The security agreement will secure future or other indebtedness and will cover after-acquired property.

I ACKNOWLEDGE RECEIPT OF THIS STATEMENT and I further understand that the disclosures herein are made solely for the purpose of compliance by the creditor with the Federal Truth in Lending Act and regulations issued thereunder. In addition, I acknowledge that these disclosures may be inconsistent with other disclosures required by state law in the contract or agreement to which these disclosures apply, and I agree that disclosures relating to the FINANCE CHARGE and the ANNUAL PERCENTAGE RATE are in no way to be considered as part of the agreement or contract identified herein.

Witness ____ Customer ____ Date ____

Copyright © 1969 by International Consumer Credit Association. All Rights Reserved. Printed in U.S.A.

A-3

LAW OFFICES
GERSHON, RUDEN, PINDAR AND OLIM
730 Healey Building
Atlanta, Georgia
(404) 524-4991

January 24, 1979

David Gershon
Isadore Ruden
George A. Pindar
Max Olim
Barry L. Katz
Jay E. Loeb

Robert Galanti

Mailing Address
P. O. Box 2872
Atlanta, Georgia 30301

Mr. David Campbell
One Shell Square, Suite 4285
New Orleans, Louisiana 70139

Dear Mr. Campbell:

Re: Ford Motor Credit Company vs.
Catherine Edmonson

I am in receipt of your letter dated January 19, 1979 requesting my permission to file an amicus curiae brief for GMAC and National Consumer Finance Assosication. This letter confirms my conversation with Ms. Yates for GMAC to file an amicus curiae brief. There was no discussion regarding NCFA, and I do not consent to their filing an amicus curiae brief at this time without knowing the reasons for their interest.

Yours very truly,

s/ Jay E. Loeb
Jay E. Loeb

JEL:jh

LEVINE & D'ALESSIO, P.A.
Attorneys at Law
Equitable Building, Suite 2415
100 Peachtree Street
Atlanta, Georgia 30303
(404) 521-1624

Thomas D'Alessio
Morton P. Levine
James R. Beach, Jr.
Homer S. Mullins
Burgess W. Stone
Benning M. Grice, Jr.

Suite 8
1597 Phoenix Boulevard
College Park, Georgia 30349

January 15, 1979

Mr. David Campbell
Attorney at Law
One Shell Square, Suite 4285
New Orleans, Louisiana 70139

Dear David:

Re: Ford Motor Credit Company v. Catherine Edmondson
Supreme Court of the United States, No. 78-1072

This is to advise you that as counsel for Ford Motor Credit Company, petitioner in the above-referenced case, I have no objections to and consent to your filing an amicus curiae brief in said case.

Yours very truly,

LEVINE & D'ALESSIO, P.A.

s/ Burgess W. Stone
Burgess W. Stone

BWS/vf